

**EXHIBIT TO DECEMBER 10, 2007
DECLARATION OF PHILIP R. HOFFMAN
IN OPPOSITION TO DEFENDANT'S
MOTION
FOR A PRELIMINARY INJUNCTION**

**PHAT FASHIONS LLC V. TORNADO
IMPORTS (CANADA), INC.**

Case No.: 07 Civ. 3278 (PAC)

EXHIBIT 54

1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 PHAT FASHIONS, LLC,

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Plaintiff,

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-against-

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TORNADO IMPORTS (CANADA), INC.,

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Defendants.

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BARRISTER REPORTING SERVICE, INC.

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120 Broadway

New York, N.Y. 10271

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212-732-8066

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PLAINTIFF'S
EXHIBIT

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<p style="text-align: right;">2</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 PRYOR CASHMAN, LLP</p> <p>5 Attorneys for Plaintiff</p> <p>6 410 Park Avenue</p> <p>7 New York, New York 10022</p> <p>8</p> <p>9 BY: PHILIP R. HOFFMAN, ESQ.</p> <p>10</p> <p>11 GIBSON DUNN & CRUTCHER</p> <p>12 Attorneys for Defendant</p> <p>13 202 Park Avenue</p> <p>14 New York, New York 10166</p> <p>15</p> <p>16 BY: ADAM H. OFFENHARTZ, ESQ.</p> <p>17 -and-</p> <p>18 LAURA M. LEITNER, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">xxxxx</p>	<p style="text-align: right;">4</p> <p>1 B. Ullmann</p> <p>2 BERNT ULLMANN,</p> <p>3 Having been first duly sworn before a Notary</p> <p>4 Public of the State of New York, was</p> <p>5 examined and testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. OFFENHARTZ:</p> <p>9 Q. What is your name?</p> <p>10 A. Bernt Ullmann.</p> <p>11 Q. What is your address?</p> <p>12 A. 512 Seventh Avenue, New York, New</p> <p>13 York 10018.</p> <p>14 Q. Mr. Ullmann, good morning.</p> <p>15 A. Good morning.</p> <p>16 Q. As I suspect you already known by</p> <p>17 now, I'm Adam Offenhartz. I'm a litigator</p> <p>18 with Gibson Dunn & Crutcher. With me, is</p> <p>19 my colleague Laura Leitner. We represent</p> <p>20 Tornado in the litigation that you and</p> <p>21 your company brought.</p> <p>22 Thank you for scheduling this</p> <p>23 today, for getting here. I'm going to ask</p> <p>24 you a series of questions. If you don't</p> <p>25 understand my questions, if you need</p>
<p style="text-align: right;">3</p> <p>1</p> <p>2</p> <p>3 STIPULATIONS</p> <p>4</p> <p>5 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>6 between the attorneys for the respective parties</p> <p>7 herein, that filing, sealing and certification, and</p> <p>8 the same are, hereby waived.</p> <p>9</p> <p>10 IT IS FURTHER STIPULATED AND AGREED that</p> <p>11 all objections except as to the form of the</p> <p>12 question, shall be reserved to the time of the</p> <p>13 trial.</p> <p>14</p> <p>15 IT IS FURTHER STIPULATED AND AGREED that</p> <p>16 the within deposition may be signed and sworn to by</p> <p>17 an officer authorized to administer an oath, with</p> <p>18 the same force and effect as if signed and sworn to</p> <p>19 before the Court.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">xxxxx</p>	<p style="text-align: right;">5</p> <p>1 B. Ullmann</p> <p>2 anything amplified, clarified, please let</p> <p>3 me know.</p> <p>4 If you need to take a break, please</p> <p>5 let me know. We'll take periodic breaks</p> <p>6 throughout the day. The only thing I'd</p> <p>7 ask is: Please let's not take a break</p> <p>8 while a question is pending. That's</p> <p>9 really about it for any beginning issues.</p> <p>10 If you have any questions along the</p> <p>11 way or if there is a time you need to</p> <p>12 leave by or anything of that nature, we</p> <p>13 can discuss that during the-break. We'll</p> <p>14 do our best to accommodate you. I know</p> <p>15 you're scheduled as needed for today and</p> <p>16 tomorrow.</p> <p>17 MR. HOFFMAN: Do we have an</p> <p>18 agreement as to the stipulations;</p> <p>19 usual stipulations on the record, all</p> <p>20 objections except as to form are</p> <p>21 reserved?</p> <p>22 MR. OFFENHARTZ: Yes.</p> <p>23 Q. Mr. Ullmann, what is your current</p> <p>24 position?</p> <p>25 A. I'm president of Phat Fashions, a</p>

6

1 B. Ullmann
2 company that is owned by Kellwood.
3 Q. How long have you been at Phat
4 Fashions?
5 A. Since February 2004.
6 Q. Did you become the president in
7 February '04?
8 A. Yes.
9 Q. Before that, where were you?
10 A. At a different company, called
11 GTFM.
12 Q. I'm sorry?
13 A. GTFM.
14 Q. Did GTFM have any connection with
15 Phat Fashions?
16 A. Only indirectly as a licensee for
17 Phat Farm products in Europe.
18 Q. Did GTFM have any connections with
19 Kellwood?
20 A. They did not.
21 Q. How long were you at GTFM?
22 A. Five years.
23 Q. Prior to that, where did you work?
24 A. Prior to that, Donna Karan.
25 Q. By the way, what titles did you

8

1 B. Ullmann
2 A. That is correct.
3 Q. Were you hired, in effect, by
4 Kellwood to become the president of Phat
5 Fashions or were you the president of Phat
6 Fashions and then Kellwood showed up,
7 oddly enough, a day later and bought the
8 company?
9 A. I was hired by Kellwood.
10 Q. What was the process by which you
11 were hired?
12 A. It was done through, firstly, a
13 recommendation from someone I trust as
14 Steven Russo, who was president of
15 womenswear for Kellwood at the time. He
16 placed a phone call.
17 It was followed up by Kellwood's
18 in-house -- what should we call him --
19 he's an in-house recruiter. His name is
20 Barry Ansell, A-N-S-E-L-L.
21 Q. Can you tell me at the time you
22 joined Phat Fashions, what the management
23 structure of Phat Fashions was?
24 A. Could you restate the question,
25 please?

7

1 B. Ullmann
2 have at GTFM?
3 A. President FUBU International. And
4 for last year and-a-half, managing
5 director, Coogi. That's C-O-O-G-I.
6 Q. Can you briefly describe your
7 education?
8 A. I have an MBA from Copenhagen
9 School of Economics. That's in Denmark.
10 Q. What year did you get the MBA?
11 A. 1985, I want to say.
12 Q. Did you receive an undergraduate
13 degree sometime before that?
14 A. That is normally the requirements,
15 yes, I did.
16 Q. What year and where did you get
17 that?
18 A. Also I have, I guess, the public
19 would be a PS and I believe it must have
20 been in '83, two years. Yes.
21 Q. When did Phat Fashions become owned
22 by Kellwood?
23 A. February 2004.
24 Q. At the same time as you came in to
25 become the president of Phat Fashions?

9

1 B. Ullmann
2 Q. Certainly. When you became the
3 president of Phat Fashions in
4 February 2004, who were the other
5 officers?
6 A. Russell Simmons was the CEO of Phat
7 Fashions. I reported to Russell and to
8 Bob Skinner, who is now chairman of
9 Kellwood.
10 Q. In February of 2004, Russell
11 Simmons was the CEO you said you reported
12 to, correct?
13 A. Yes.
14 Q. Did Bob Skinner have a role at Phat
15 Fashions?
16 A. Yes.
17 Q. What was his role at Phat Fashions?
18 A. He was Russell's boss.
19 Q. At Phat Fashions or at Kellwood?
20 A. My view, but only my view -- I am
21 not certain how it is formally
22 structured -- is that Bob, in his capacity
23 at Kellwood, was the most senior officer
24 of Phat Fashions.
25 Q. What was Bob Skinner's capacity at

<p style="text-align: right;">10</p> <p>1 B. Ullmann</p> <p>2 Kellwood?</p> <p>3 A. Back then, he was the president --</p> <p>4 I want to say president of Kellwood.</p> <p>5 Q. Is Russell Simmons still the CEO of</p> <p>6 Phat Fashions today?</p> <p>7 A. He is not.</p> <p>8 Q. Who is the CEO of Phat Fashions</p> <p>9 today?</p> <p>10 A. No one is formally holding the CEO</p> <p>11 title.</p> <p>12 Q. Is there someone that acts as the</p> <p>13 CEO of Phat Fashions?</p> <p>14 A. I report to the company and I</p> <p>15 report to Bob Skinner.</p> <p>16 Q. When did Russell Simmons leave the</p> <p>17 company?</p> <p>18 A. August of this year.</p> <p>19 Q. Immediately prior to Russell</p> <p>20 Simmons' departure from the company, was</p> <p>21 he still the CEO of the company?</p> <p>22 A. He held the title of a CEO. He was</p> <p>23 not the CEO in your traditional</p> <p>24 understanding of the title.</p> <p>25 Q. What is your traditional</p>	<p style="text-align: right;">12</p> <p>1 B. Ullmann</p> <p>2 work?</p> <p>3 A. That's one of the things I'm</p> <p>4 saying, yes, sir.</p> <p>5 Q. What are the other things you're</p> <p>6 saying?</p> <p>7 A. I think if you're going to fulfill</p> <p>8 your functions as a CEO, you would need to</p> <p>9 have a clear understanding of the</p> <p>10 financial performance of the organization.</p> <p>11 And I am not certain that Mr. Simmons was</p> <p>12 focusing on that. As I did say, he was a</p> <p>13 great brand visionary.</p> <p>14 Q. When you joined Phat Fashions in</p> <p>15 February 2004, were there other senior</p> <p>16 officers?</p> <p>17 A. How do you define senior officers?</p> <p>18 Q. How do you define senior officers?</p> <p>19 You're running the company; who are your</p> <p>20 senior officers today?</p> <p>21 A. There is a CFE, chief financial</p> <p>22 executive. We had a president of</p> <p>23 licensing. I would say that probably</p> <p>24 qualifies as a senior officer. But define</p> <p>25 officer for me.</p>
<p style="text-align: right;">11</p> <p>1 B. Ullmann</p> <p>2 understanding of the title?</p> <p>3 A. My view of a CEO is someone that is</p> <p>4 hands-on and shows up for work every day.</p> <p>5 And is executing leadership. He was not</p> <p>6 leading the company.</p> <p>7 Q. You felt he wasn't doing a good</p> <p>8 job?</p> <p>9 MR. HOFFMAN: Objection to</p> <p>10 the form. You can answer.</p> <p>11 A. Ask me again.</p> <p>12 Q. Did you think Mr. Simmons was doing</p> <p>13 a good job as CEO prior to his departure?</p> <p>14 A. My view is that the CEO was the CEO</p> <p>15 title. By traditional standards of CEO,</p> <p>16 no, he was not. As a brand visionary -- a</p> <p>17 founder, brand visionary and had celebrity</p> <p>18 endorsement of the brand for many years,</p> <p>19 he did.</p> <p>20 Q. What are the traditional functions</p> <p>21 of a CEO that you thought he wasn't</p> <p>22 fulfilling?</p> <p>23 A. As I said, I think one of the</p> <p>24 requirements is a presence in the office.</p> <p>25 Q. You're saying he didn't come to</p>	<p style="text-align: right;">13</p> <p>1 B. Ullmann</p> <p>2 Q. How do you use the word officer?</p> <p>3 You're running this company; how do you</p> <p>4 use the word officer?</p> <p>5 A. To me, an officer is someone that</p> <p>6 has the ability to bind or oblige the</p> <p>7 company and as such, there were only two</p> <p>8 individuals that filled that role fully</p> <p>9 and that was Russell Simmons and Bob.</p> <p>10 Thirdly, would be myself, but I would not</p> <p>11 bind the company to the extent at all over</p> <p>12 Russell Simmons or Bob Skinner.</p> <p>13 Q. Mr. Ullmann, can you tell me who</p> <p>14 Jan Wotton is?</p> <p>15 A. An individual that works at</p> <p>16 Kellwood legal.</p> <p>17 Q. Is Jan Wotton a man or a woman?</p> <p>18 A. I'm not certain.</p> <p>19 Q. Is Jan Wotton a lawyer?</p> <p>20 A. I'm not certain.</p> <p>21 MR. HOFFMAN: I can help you</p> <p>22 if you want it or not.</p> <p>23 MR. OFFENHARTZ: Please.</p> <p>24 MR. HOFFMAN: I believe I</p> <p>25 understand that Jan Wooten is a</p>

14

1 B. Ullmann
2 female and is a paralegal.
3 Q. I take it you do not have a lot of
4 contact with Ms. Wotton?
5 A. I do not.
6 Q. By the way, what is the office of
7 Phat Fashions, please?
8 MR. HOFFMAN: Location?
9 MR. OFFENHARTZ: The
10 location.
11 Q. The address of the office of Phat
12 Fashions.
13 A. 512 Seventh Avenue.
14 Q. What's your phone number at Phat
15 Fashions?
16 A. (212)798-3100.
17 Q. Do you have a direct dial?
18 A. I do. 3101.
19 Q. Where is Kellwood located?
20 A. 420 Fifth Avenue.
21 Q. Here in Manhattan?
22 A. Yes.. That would be their -- let me
23 be more specific.
24 Q. Please.
25 A. Kellwood is headquartered in St.

15

1 B. Ullmann
2 Louis, but their corporate office in New
3 York, the office that Bob works out of
4 most of the time is 420 Fifth Avenue.
5 Q. Can you tell me, please, who Cathy
6 McGuiness is?
7 A. She is my assistant.
8 Q. How long has she been your
9 assistant?
10 A. Maybe two years.
11 Q. Who was your assistant prior to
12 that?
13 A. Judith Parker.
14 Q. Can you please tell me who Cory
15 Isom is?
16 A. I believe Cory Isom is an
17 individual that either works or worked at
18 Kellwood legal.
19 Q. Do you know in what capacity they
20 worked or work at Kellwood legal?
21 A. I do not.
22 Q. You don't know if they were a
23 lawyer or paralegal?
24 A. I do not.
25 MR. HOFFMAN: I believe,

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1 B. Ullmann
2 once again, we're talking about a
3 paralegal.
4 MR. OFFENHARTZ: Thank you.
5 Q. Can you please tell me who Annie
6 Walker is?
7 A. I'm not familiar with the name.
8 Q. Mr. Ullmann, can you tell me who
9 Gaby Bitton is?
10 A. He's the owner of a company called
11 Buffalo Jeans.
12 Q. When did you first become aware of
13 Gaby Bitton?
14 A. I think in the fall of 2006.
15 Q. Under what circumstances did you
16 become aware of Mr. Bitton, Buffalo Jeans?
17 A. Bob Skinner introduced him to me.
18 Q. Was this introduce by phone, in
19 person?
20 A. By phone.
21 Q. Do you know what Mr. Skinner told
22 you about Mr. Bitton and Buffalo Jeans in
23 advance of this phone introduction?
24 A. My understanding was that Bob
25 Skinner had had an exploratory meeting

17

1 B. Ullmann
2 with Gaby Bitton in Canada and at the time
3 he had been impressed by Mr. Bitton's
4 operation and infrastructure and he
5 brought Mr. Bitton to my attention.
6 Q. Do you recall when Mr. Skinner had
7 that meeting with Mr. Bitton?
8 A. I don't know when that meeting took
9 place.
10 Q. Obviously sometime prior to your
11 introductory call in February of 2006?
12 A. I don't believe the call took place
13 in February of 2006.
14 MR. HOFFMAN: I think he
15 said the fall.
16 Q. I stand corrected, you did say fall
17 2006.
18 A. It stands to reason, as you said,
19 sometime before fall, but I don't know.
20 Q. Do you keep a calendar; do you jot
21 down in a calendar, either paper or
22 electronic, your schedules of phone calls?
23 A. I do not.
24 Q. Do you take notes when you're on
25 the phone usually?

<p style="text-align: right;">18</p> <p>1 B. Ullmann</p> <p>2 A. I do not.</p> <p>3 Q. As a practice or sometimes you do</p> <p>4 and sometimes you don't?</p> <p>5 A. Very rarely, I do.</p> <p>6 Q. Do you recall taking any notes of</p> <p>7 your meetings with Mr. Skinner regarding</p> <p>8 Mr. Bitton?</p> <p>9 A. No.</p> <p>10 Q. Do you know how long that</p> <p>11 conversation took?</p> <p>12 A. I do not.</p> <p>13 Q. In the fall of 2006, did you have a</p> <p>14 licensee in Canada?</p> <p>15 A. Yes.</p> <p>16 Q. Who was that licensee?</p> <p>17 MR. HOFFMAN: Objection to</p> <p>18 the form.</p> <p>19 Q. You can answer.</p> <p>20 A. It was Tornado.</p> <p>21 Q. How long was that introductory</p> <p>22 phone call you had with Mr. Bitton in the</p> <p>23 fall of 2006?</p> <p>24 A. I think I need to clarify</p> <p>25 something: I cannot recall that there was</p>	<p style="text-align: right;">20</p> <p>1 B. Ullmann</p> <p>2 conversation; I don't recall how long.</p> <p>3 Q. What was the follow-up after that</p> <p>4 initial call?</p> <p>5 A. I want to say probably just saying</p> <p>6 in touch, phone calls back and forth</p> <p>7 informally. At one point, we met in New</p> <p>8 York; I do not recall when that was.</p> <p>9 Q. Do you recall the substance of the</p> <p>10 initial phone call you had with</p> <p>11 Mr. Bitton?</p> <p>12 A. The first phone call was simply</p> <p>13 introductory. Bob Skinner, my boss, said,</p> <p>14 There is someone in Canada that I would</p> <p>15 like you to introduce yourself to, so</p> <p>16 that's what I did.</p> <p>17 Q. Do you recall what the next phone</p> <p>18 calls covered?</p> <p>19 A. The phone calls evolved into two</p> <p>20 conversations. One about the state of our</p> <p>21 business in Canada and Mr. Bitton's view</p> <p>22 of how it ran was poorly managed and</p> <p>23 represented.</p> <p>24 And another conversation about a</p> <p>25 possible retail collaboration for the</p>
<p style="text-align: right;">19</p> <p>1 B. Ullmann</p> <p>2 an actual introductory phone call. I</p> <p>3 think maybe Bob, when I said introduced, I</p> <p>4 meant introduced as a concept. As a</p> <p>5 party, as an individual; not a formal</p> <p>6 introduction.</p> <p>7 More along the lines, there is a</p> <p>8 fellow named Gaby Bitton, he owns a</p> <p>9 company called Buffalo Jeans, this is his</p> <p>10 number. I do not recall a formal</p> <p>11 introduction on the phone.</p> <p>12 Q. Thank you for that clarification.</p> <p>13 This first call that you had with</p> <p>14 Mr. Bitton, should I take it then that</p> <p>15 Mr. Skinner was not on the call?</p> <p>16 A. Correct.</p> <p>17 Q. Do you recall how long that first</p> <p>18 conversation you had with Mr. Bitton was?</p> <p>19 A. I don't.</p> <p>20 Q. Was it an hour discussion?</p> <p>21 A. Clearly not.</p> <p>22 Q. If it clearly wasn't an hour, how</p> <p>23 clearly long was it?</p> <p>24 A. It was clearly a brief</p> <p>25 conversation. It was a brief</p>	<p style="text-align: right;">21</p> <p>1 B. Ullmann</p> <p>2 United States.</p> <p>3 Q. At what point did you begin</p> <p>4 discussing a licensing agreement with Mr.</p> <p>5 Bitton in Canada?</p> <p>6 A. I don't recall.</p> <p>7 Q. At what point did you begin</p> <p>8 discussing the possible retail</p> <p>9 collaboration in the U.S.?</p> <p>10 A. Again, I don't recall. Other than</p> <p>11 these conversations were more or less</p> <p>12 concurrent because it appears that</p> <p>13 proprietary retail is an integral part of</p> <p>14 how Mr. Bitton is growing the Buffalo</p> <p>15 Jeans brand.</p> <p>16 Q. What do you mean by proprietary</p> <p>17 retail?</p> <p>18 A. I mean monomark or flagship-type of</p> <p>19 stores that only carry one brand. In this</p> <p>20 case, they have Buffalo Jeans stores; they</p> <p>21 only carry Buffalo Jeans. I was</p> <p>22 interested in getting the world of Phat</p> <p>23 represented in its own retail environment.</p> <p>24 Q. You wanted the world of Phat, as</p> <p>25 you put it, to have its own world of Phat</p>

22

1 B. Ullmann
2 stores, if you will?
3 A. Correct.
4 Q. How many conversations did you have
5 with Mr. Bitton from the fall of 2006
6 through January 1, 2007?
7 A. I don't recall how many, but I
8 would say there are several. So it's not
9 one or two; there's more than one or two.
10 Q. Less than 50?
11 A. Clearly.
12 Q. You entered into a licensing
13 agreement with Mr. Bitton and Buffalo
14 Jeans of Canada, haven't you?
15 MR. HOFFMAN: Objection to
16 the form.
17 Q. You can answer.
18 A. Yes.
19 Q. Do you know when you executed that
20 agreement?
21 A. It was executed over the last
22 couple of months.
23 Q. Can you be more specific?
24 A. No.
25 Q. Did you also execute an agreement

23

1 B. Ullmann
2 regarding a retail collaboration in the
3 U.S.?
4 A. Yes.
5 Q. Was that executed contemporaneously
6 with the licensing agreement?
7 A. It was intended to, but no. And
8 that agreement, I want to say, was
9 executed maybe a month ago.
10 Q. Who is Marc Kakon?
11 A. He works at the company called
12 Algo.
13 Q. Can you tell me what Algo does?
14 A. My understanding is that Algo is a
15 multi-brand publicly-trading company in
16 Canada. They were introduced through Gaby
17 Bitton.
18 Q. They were introduced to Gaby
19 Bitton?
20 A. No, they were introduced to us
21 through Gaby Bitton.
22 Q. Are you doing any business with
23 Algo at this time?
24 A. I believe Algo is a part-owner of
25 the entity that now holds the license that

24

1 B. Ullmann
2 will commence January 1, '08.
3 Q. What is the name of the entity that
4 you executed an agreement with for the
5 license in Canada?
6 A. Without checking my reports, I
7 don't know.
8 Q. It is a company owned or controlled
9 by Gaby Bitton?
10 MR. HOFFMAN: Objection to
11 the form.
12 Q. You can answer.
13 A. I cannot say if it's controlled by
14 Gaby Bitton. He is a part-owner.
15 Q. Who runs the company that you just
16 signed a licensing agreement with for
17 Canada?
18 A. My understanding is that the
19 current CEO is Isaac Stern.
20 Q. You kind of chuckled and said
21 "current CEO." Are you expecting a change
22 eminently?
23 A. No.
24 Q. Was Mr. Stern just recently
25 appointed in that position?

25

1 B. Ullmann
2 A. My understanding is that Mr. Stern
3 was not involved in the early
4 negotiations, but have come in forcefully
5 and assumed control of the leadership of
6 that company.
7 Q. If you need to talk with someone at
8 this entity with which you entered a
9 licensing agreement in Canada because you
10 have a concern or an issue that you'd like
11 to discuss, who do you call?
12 A. Isaac or Gaby.
13 Q. Who is Rosa Costa?
14 A. I don't know.
15 Q. Do you know a Dan Elituv?
16 A. I have met a Dan during some of my
17 meetings with our new licensee; I don't
18 know if his last name is Elituv.
19 Q. You understand that Dan works at
20 your licensee?
21 A. I have met a Dan that works at the
22 licensee.
23 Q. Do you know where Russell Simmons
24 is now?
25 MR. HOFFMAN: At this

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1 B. Ullmann
 2 Tornado, didn't you?
 3 A. Yes.
 4 Q. You, of course, I mean Phat
 5 Fashions?
 6 A. Correct.
 7 Q. Why did you file that lawsuit?
 8 A. Simply to receive a clarification
 9 of what we believe to be the facts of our
 10 relationship.
 11 Q. What are those facts, as you
 12 understand them, in your perspective?
 13 A. Understood. The fact, in my view,
 14 is that Tornado has a licensing agreement
 15 for certain Phat Farm products and this
 16 agreement is set to expire at the end of
 17 2007. Those are the facts as I see them.
 18 Q. You mentioned that you think the
 19 claims and defenses brought by my client
 20 are, and we can check it, was either
 21 insincere or insignificant?
 22 MR. HOFFMAN: Objection to
 23 the form. I don't think that the
 24 words "claims" and "defenses" and
 25 the like; he said whatever it was

36

1 B. Ullmann
 2 A. Several. Again, more than two;
 3 less than ten.
 4 Q. When did these several
 5 conversations take place?
 6 A. I want to say that they started
 7 either at or right at the MAGIC trade show
 8 in February of 2007.
 9 Q. At or before the MAGIC trade show
 10 Issie Wiseman indicated to you that he
 11 understood you weren't renewing the
 12 licensing agreement?
 13 MR. HOFFMAN: In 2007,
 14 because we have two MAGIC shows, we
 15 should be clear about which one
 16 we're talking about.
 17 MR. OFFENHARTZ: Fair point.
 18 Thank you.
 19 Q. Mr. Ullmann, which MAGIC show were
 20 you referring to in your last answer?
 21 A. The one in February 2007.
 22 Q. The several conversations you're
 23 talking about, when do you think they
 24 began?
 25 A. Either end of January or beginning

35

1 B. Ullmann
 2 that he said.
 3 MR. OFFENHARTZ: Let me
 4 rephrase.
 5 Q. I think you said Mr. Wiseman's case
 6 is insignificant or insincere?
 7 A. Right.
 8 MR. HOFFMAN: Same objection
 9 to form. He said what he said.
 10 Q. Can you please elaborate on that?
 11 A. My view, based upon my
 12 conversations with Issie Wiseman, is that
 13 he full-well recognizes that his agreement
 14 expires. On a number of occasions, he
 15 recognized it. On a number of occasions
 16 he said, "Well, if there's something those
 17 guys don't really do a lot in handbags,
 18 maybe I can continue with the handbags;
 19 what do you think?"
 20 Conversations like that clearly
 21 have led me to know, for a fact, that he
 22 agrees and recognizes that his agreement
 23 expires.
 24 Q. How many conversations are we
 25 talking about here?

37

1 B. Ullmann
 2 of February 2007, I believe.
 3 Q. When did you first inform, to your
 4 recollection, Mr. Wiseman that you would
 5 not be extending the licensing agreement?
 6 A. I cannot recall this fully, but I
 7 believe, again, it was around the same
 8 time. Some weeks prior to the MAGIC show
 9 in February of '07.
 10 Q. Your recollection is that late
 11 January or early February, you informed
 12 Mr. Wiseman that you were not renewing the
 13 extension?
 14 MR. HOFFMAN: Objection to
 15 the form.
 16 A. Yes, and it's not -- you said
 17 reviewing the extension? I never viewed
 18 it as renewing any extension. It was, we
 19 were not amending the agreement. The
 20 agreement was set to expire at the end of
 21 December of 2007. There were no renewals
 22 left; it could not be renewed.
 23 Q. You had agreed to the form of an
 24 amendment extending the agreement, hadn't
 25 you?

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1 B. Ullmann
2 issue. That didn't happen.
3 Furthermore, in order for this to
4 be a binding document, not only did an
5 agreement have to be signed by both
6 Russell Simmons and Bob Skinner, it also
7 had to be delivered back to the licensee,
8 Tornado. None of which happened. And
9 there was no legal amendment. I was free
10 to proceed.
11 Q. You recall Mr. Rollins telling you
12 that it had to be executed and returned,
13 or do you recall discussing that with
14 Counsel in preparation for this
15 deposition?
16 A. I do recall discussing this with
17 Counsel in preparation. I cannot recall
18 if it's independent recollection.
19 Q. You said it was highly unusual for
20 Mr. Wiseman to sign the agreement?
21 A. No, I didn't say that.
22 Q. Please tell me what you said.
23 A. I said it's highly unusual for any
24 licensee to sign a draft amendment as
25 opposed to an execution agreement.

47

1 B. Ullmann
2 Q. You viewed the document that
3 Mr. Wiseman signed as simply a draft that
4 was something the parties would continue
5 to negotiate, work on, play with and move
6 forward with or not, correct?
7 A. That is correct.
8 Q. At the time you were the president
9 of Phat Fashions, right?
10 A. Correct.
11 Q. Clearly your understanding is that
12 your law firm, your colleagues would have
13 had the same understanding that this
14 document that Issie Wiseman signed was
15 just a draft, has no meaning, has no
16 bearing; it's nothing, right?
17 MR. HOFFMAN: Objection to
18 the form. How can he testify about
19 other people's understandings?
20 Q. Mr. Ullmann, you testified that
21 Mr. Simmons didn't show up for work. You
22 testified that Mr. Simmons, in many
23 respects, was not a good CEO. You
24 testified that Mr. Simmons violated the
25 Kellwood code of conduct. You testified

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1 B. Ullmann
2 that it's important for a CEO, for a
3 leader of a company, to be present and to
4 be involved.
5 I'm trying to understand if you,
6 as the president of Phat Fashions, if your
7 understanding was the company's
8 understanding?
9 MR. HOFFMAN: Objection to
10 the form. That question is --
11 wait.
12 MR. OFFENHARTZ: You stated
13 your objection. No speaking
14 objections.
15 MR. HOFFMAN: I'm not giving
16 a speaking objection, but I'm not
17 finished with my objection to form.
18 There is a question pending,
19 but the entire prologue to the
20 question, I'm objecting to.
21 Whatever he's testified to, he has
22 testified to. If he understands
23 the question you just asked that
24 was actually the question, that's
25 fine.

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1 B. Ullmann
2 I have an objection to form,
3 but he can answer. Can we have
4 just the question read back.
5 MR. OFFENHARTZ: Let me move
6 on to another version.
7 Q. Given that you were the president
8 of Phat Fashions, wouldn't it be your
9 understanding, or your expectation, that
10 your Counsel would agree with you that it
11 was highly unusual for Issie Wiseman to
12 sign a draft and would consider it a
13 document still very much open to further
14 negotiation?
15 MR. HOFFMAN: Objection to
16 the form.
17 A. I can't speak to how Counsel felt
18 or thought my view was; it the was very
19 much open to continue dialogue.
20 Q. Given your perspective that it was
21 very unusual for Mr. Wiseman to sign this
22 document, wouldn't you expect that your
23 colleagues at Phat Fashions would have a
24 similar view?
25 MR. HOFFMAN: Objection to

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1 B. Ullmann
 2 the form.
 3 A. Again, I have no opinion about what
 4 my colleagues thought or didn't think. I
 5 cannot comment on their thoughts. I can't
 6 speculate on what they thought.
 7 Q. During the period with which you
 8 were having, what you call, a dialogue
 9 over the draft -- your language -- that
 10 Mr. Wiseman signed; what conversations did
 11 you have with Counsel regarding that?
 12 MR. HOFFMAN: "That" being?
 13 Q. That draft, as you describe it?
 14 A. Not a lot.
 15 Q. Tell me about the ones you did
 16 have.
 17 A. I cannot recall any individual
 18 dialogue referring to the draft. I can
 19 only recall some of the dialogue with
 20 Mr. Wiseman.
 21 Q. Who led the dialogue, as you
 22 described it, with Mr. Wiseman regarding a
 23 possible -- your language -- renewal of
 24 the license agreement with Tornado?
 25 MR. HOFFMAN: Objection to

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1 B. Ullmann
 2 Q. Of this week?
 3 A. Yes.
 4 Q. For how long?
 5 A. Maybe a couple of hours.
 6 Q. Two days ago?
 7 A. Yes, a couple of hours.
 8 Q. Two hours?
 9 A. Two hours.
 10 Q. Two to three hours, one to two
 11 hours?
 12 A. Two to three hours.
 13 Q. Which documents did you review, if
 14 any?
 15 MR. HOFFMAN: I'm going to
 16 object to that.
 17 Q. Did you review documents?
 18 A. Some.
 19 Q. Can you give me a sense of the --
 20 A. I don't recall reviewing a lot of
 21 documents in their entirety, but we
 22 certainly reviewed a few. More than two
 23 or three, less than ten.
 24 Q. Which documents did you review?
 25 MR. HOFFMAN: I'm going to

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1 B. Ullmann
 2 the form on "renewal".
 3 A. I did.
 4 MR. OFFENHARTZ: If I said
 5 amendment?
 6 MR. HOFFMAN: Yes, because
 7 when you said renewal --
 8 Q. You led that effort?
 9 A. Correct.
 10 MR. HOFFMAN: Objection to
 11 the form. I don't think effort was
 12 the word.
 13 MR. OFFENHARTZ: Can you
 14 read back the last couple of
 15 questions and answers.
 16 (Whereupon the record was
 17 read back by the reporter.)
 18 (Brief recess taken.)
 19 Q. Mr. Ullmann, did you meet with
 20 Counsel to prepare for this deposition?
 21 A. I did.
 22 Q. How many times?
 23 A. Once.
 24 Q. When?
 25 A. Tuesday.

53

1 B. Ullmann
 2 object on the grounds of
 3 attorney-client privilege and work
 4 product, but if you can remember
 5 the ones that you reviewed, you can
 6 tell him.
 7 MR. OFFENHARTZ: I asked him
 8 which he remembers reviewing.
 9 MR. HOFFMAN: Since I'm not
 10 objecting, it's not going to be a
 11 big deal.
 12 A. I remember reviewing the licensing
 13 agreement. We looked at -- I don't
 14 remember looked at -- talked about the
 15 draft amendments. We obviously
 16 discussed --
 17 MR. HOFFMAN: You're not
 18 supposed to go into what we
 19 discussed. His question is only
 20 about documents.
 21 Q. Got it. That's what?
 22 A. Sorry. No problem. Thank you. My
 23 apologies.
 24 And the last -- I want to say a
 25 couple of e-mails.

66

1 B. Ullmann
 2 company and he had the title of CEO.
 3 Q. Do you know how the agreement got
 4 to Mr. Simmons for his execution?
 5 A. I don't.
 6 Q. Who was involved in handling the
 7 Tornado relationship within Phat Fashions?
 8 A. Can you clarify the question?
 9 Q. If someone asked you who, at Phat
 10 Fashions, dealt with Tornado in 2006, who
 11 would you include on that list?
 12 A. In any capacity?
 13 Q. Please tell me -- sure.
 14 A. I would say contractually, it would
 15 be myself on the business end; it would be
 16 a number of individuals. So it can be
 17 someone from licensing, it could be
 18 someone working in product, it could be
 19 someone in marketing.
 20 Q. Thank you. That's a responsive
 21 answer.
 22 In terms of a dialogue, as you put
 23 it, with Tornado, who would have been
 24 involved in the dialogue process?
 25 A. Myself.

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1 B. Ullmann
 2 Q. Anyone else?
 3 A. No.
 4 Q. Who would have handled, either your
 5 outside Counsel, in-house; who else would
 6 have been involved with any paperwork?
 7 A. Paperwork could be Eli Nathanson
 8 from Pryor Cashman. I would say at the
 9 time, either Don Gramke of Kellwood legal
 10 and later, Luther Rollins of Kellwood
 11 legal and lastly, Peter Morris, our CFE.
 12 Q. Do you recall who handled the
 13 document that Mr. Wiseman executed and
 14 returned to Phat Fashions?
 15 MR. HOFFMAN: Objection to
 16 the form.
 17 A. I honestly don't know.
 18 Q. Your understanding is it would have
 19 been, perhaps, Mr. Morris, Mr. Gramke,
 20 Mr. Rollins or Mr. Nathanson?
 21 MR. HOFFMAN: Objection to
 22 the form.
 23 A. It would have been one of those
 24 three and I would say I think it's more
 25 likely -- could you restate the question.

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1 B. Ullmann
 2 MR. OFFENHARTZ: Sure. Can
 3 you read back the question, please.
 4 (Whereupon the record was
 5 read back by the reporter.)
 6 A. Then the answer is correct. One of
 7 those three.
 8 Q. Mr. Gramke had died at some point
 9 during this story; is that correct?
 10 A. Yes.
 11 Q. Do you recall when?
 12 A. No.
 13 Q. Do you recall the circumstances of
 14 his death?
 15 A. He committed suicide.
 16 Q. He was, you mentioned, an in-house
 17 lawyer at Kellwood?
 18 A. Yes, of course.
 19 Q. You trust and think Mr. Nathanson a
 20 competent lawyer?
 21 A. I trust him. I have no opinion
 22 about his competency as a lawyer. I think
 23 he's -- in all my dealings, he's very
 24 competent and I do trust him fully.
 25 Q. You rely on Mr. Nathanson's advice?

69

1 B. Ullmann
 2 A. Yes.
 3 Q. Do you think Mr. Rollins is a
 4 competent professional?
 5 A. To the best of my knowledge.
 6 Q. You rely on his advice?
 7 A. I do.
 8 Q. You have no reason to not trust his
 9 abilities?
 10 A. No reason not to trust anyone's
 11 abilities.
 12 Q. Regarding Mr. Morris, you trust his
 13 advice?
 14 MR. HOFFMAN: I think you
 15 may want to make that past tense.
 16 Q. Can you answer the question?
 17 A. Do I trust his advice? Mr. Morris
 18 is not typically providing me, or did not
 19 typically provide me with advice.
 20 Q. Mr. Morris is no longer with the
 21 company?
 22 A. He's not.
 23 Q. Where does he work now?
 24 A. Something called Active Apparel, I
 25 believe.

<p style="text-align: right;">70</p> <p>1 B. Ullmann</p> <p>2 Q. What was Mr. Morris' role?</p> <p>3 A. CFE.</p> <p>4 Q. Do you think him a competent CFE?</p> <p>5 A. I liked him a lot.</p> <p>6 Q. Did you think of him a competent</p> <p>7 CFE?</p> <p>8 A. I think he worked hard and did the</p> <p>9 best that he could.</p> <p>10 Q. Did you think him competent?</p> <p>11 MR. HOFFMAN: I think that</p> <p>12 question has been asked and</p> <p>13 answered.</p> <p>14 MR. OFFENHARTZ: It's clear</p> <p>15 from the witness' facial expression</p> <p>16 he wants to answer it and he can't</p> <p>17 quite bring himself to answer it.</p> <p>18 MR. HOFFMAN: I object to</p> <p>19 the characterization --</p> <p>20 MR. OFFENHARTZ: I'm sure</p> <p>21 you could --</p> <p>22 MR. HOFFMAN: You're</p> <p>23 constantly interrupting me and it's</p> <p>24 very rude.</p> <p>25 MR. OFFENHARTZ: There is a</p>	<p style="text-align: right;">72</p> <p>1 B. Ullmann</p> <p>2 me that in answering these questions, you</p> <p>3 have been making a facial expression that</p> <p>4 would lend one to think that you are</p> <p>5 trying very hard to, perhaps with the best</p> <p>6 of intentions, avoid saying that you don't</p> <p>7 think Mr. Morris was competent?</p> <p>8 A. If the question is very well-put</p> <p>9 and it's a little unfair to say that.</p> <p>10 Mr. Morris is, to a large extent,</p> <p>11 competent. He was not really involved in</p> <p>12 the business dealings and that's the</p> <p>13 accurate -- so he's a good guy, he's an</p> <p>14 overall competent guy; he wasn't really</p> <p>15 involved in the transactions of the</p> <p>16 business negotiations. He wasn't really</p> <p>17 involved in them.</p> <p>18 So I didn't take his advice. He</p> <p>19 wasn't involved. His function was</p> <p>20 mechanical in the negotiations. He moved</p> <p>21 the paper around.</p> <p>22 Q. Mr. Nathanson, Gramke and Rollins,</p> <p>23 those people you counted on and you relied</p> <p>24 on?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">71</p> <p>1 B. Ullmann</p> <p>2 question pending.</p> <p>3 MR. HOFFMAN: No, there is</p> <p>4 not a question pending. There is</p> <p>5 an objection pending. I'm asking</p> <p>6 you, Adam, as a courtesy to let me</p> <p>7 get a whole sentence out. The</p> <p>8 sentence is -- maybe it's more than</p> <p>9 one sentence.</p> <p>10 You're characterizing his</p> <p>11 facial expressions. I'm not</p> <p>12 agreeing with you about what his</p> <p>13 facial expressions state. When you</p> <p>14 say that it's clear to you what</p> <p>15 he's thinking, then we really don't</p> <p>16 have to do a deposition because we</p> <p>17 can just let the reporter write</p> <p>18 down what these thoughts are.</p> <p>19 MR. OFFENHARTZ: If you'll</p> <p>20 stipulate to that, I'll be happy to</p> <p>21 do that.</p> <p>22 MR. HOFFMAN: Whatever he's</p> <p>23 thinking, he's thinking. Please</p> <p>24 don't put words into his mouth.</p> <p>25 Q. Mr. Ullmann, would you agree with</p>	<p style="text-align: right;">73</p> <p>1 B. Ullmann</p> <p>2 Q. Mr. Ullmann, when did you and Issie</p> <p>3 Wiseman first discuss the possibility of</p> <p>4 amending the licensing agreement to extend</p> <p>5 it?</p> <p>6 A. I cannot recall the first time; it</p> <p>7 was sometime in the spring of '06 -- oh,</p> <p>8 boy. Wait. Let me take that back.</p> <p>9 It may have been as early as</p> <p>10 towards the end of '05. I believe it came</p> <p>11 up the first time at MAGIC -- at the MAGIC</p> <p>12 show in February of '06. But I'm not</p> <p>13 certain. This is what I think could have</p> <p>14 happened.</p> <p>15 Q. Can you tell me what you recall of</p> <p>16 that first discussion?</p> <p>17 A. Very casual, very fleeting. Just</p> <p>18 Issie saying something along the lines of,</p> <p>19 Hey, I'd like to renew our agreement and</p> <p>20 me, just as easily and casually, saying,</p> <p>21 Sure, why not. And then I believe we had</p> <p>22 a brief conversation about it at the MAGIC</p> <p>23 show. So I think maybe there was one</p> <p>24 phone conversation prior and then a very</p> <p>25 casual conversation at the show.</p>

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1 B. Ullmann
 2 Q. Do you recall if Mr. Wiseman called
 3 you or you called Mr. Wiseman, the
 4 pre-MAGIC show conversation?
 5 A. I don't recall.
 6 Q. Can you tell me what you recall of
 7 the discussions at the MAGIC show?
 8 A. I don't recall a lot; the shows are
 9 very, very hectic. There is never any
 10 time to sit down and have formal
 11 conversations. I do recall having said
 12 something about him needing to increase
 13 minimums, but I can't recall if it's a
 14 free memory from the actual conversation
 15 or something that has been brought up
 16 later.
 17 Q. When you say "later," you mean
 18 perhaps in preparation for this deposition
 19 or the litigation?
 20 A. Prior to that, but I don't remember
 21 when.
 22 Q. Why did you want to raise the
 23 minimums?
 24 A. Well, I didn't. I was perfectly
 25 happy minding my own business when Issie

75

1 B. Ullmann
 2 brought up renewal. It was not on my mind
 3 at all. As a knee-jerk reaction, I
 4 said -- whatever I said; I don't know what
 5 I said.
 6 But it was something along the
 7 lines of, if we are to even consider it,
 8 you're going to need to bring up your
 9 minimums.
 10 Q. What was the next contact you had
 11 with Issie following the MAGIC show?
 12 A. I don't recall.
 13 Q. You may have already spoken of
 14 this: The MAGIC show occurred when in
 15 2006?
 16 A. February of 2006.
 17 Q. Do you recall in the early part of
 18 the month, the latter part of the month?
 19 A. I want to say it's the latter part
 20 of the month, but again --
 21 MR. HOFFMAN: Before or
 22 after President's Day?
 23 THE WITNESS: I honestly
 24 don't remember.
 25 Q. Where was the MAGIC show held?

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1 B. Ullmann
 2 A. In Las Vegas. Well, actually, when
 3 is Valentine's Day?
 4 MR. HOFFMAN: The 14th.
 5 A. Typically, I end up running afoul
 6 around Valentine's Day, so that should
 7 help us.
 8 Q. You think it was probably around
 9 Valentine's Day?
 10 A. As I said, I am typically running
 11 afoul on Valentine's Day.
 12 MR. OFFENHARTZ: Can you
 13 mark this as Defendant's Exhibit 1,
 14 please.
 15 (Whereupon Two-page exhibit
 16 bearing Bates stamp TOR899 and
 17 TOR900 was marked Defendant's
 18 Exhibit 1 for identification as of
 19 this date.)
 20 Q. Mr. Ullmann, I'm going to hand you
 21 a document that's been marked as
 22 Defendant's Exhibit 1. Could you take a
 23 moment, please, and review this?
 24 A. Yes. Okay.
 25 MR. OFFENHARTZ: First of

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1 B. Ullmann
 2 all, for the record, this is a
 3 two-page exhibit bearing Bates
 4 stamp TOR899 and TOR900.
 5 Q. Mr. Ullmann, can you identify this
 6 exhibit, please?
 7 A. It's an e-mail from Issie to Barry.
 8 And then further down, I guess these are
 9 two e-mails, I guess because further down
 10 it says from Issie to Bernt.
 11 So it's an e-mail to me and
 12 attached to the e-mail appears to be some
 13 proposed minimums for the amended
 14 agreement.
 15 Q. Do you recall receiving the e-mail
 16 from Mr. Wiseman on or about March 1,
 17 2006?
 18 A. Honestly, I don't recall. I don't
 19 recall.
 20 Q. Do you recall, at some point in
 21 March 2006, looking at these minimums and
 22 having a reaction to these minimums?
 23 A. I don't.
 24 Q. Would you have discussed these
 25 minimums with anyone at Phat Fashions?

<p style="text-align: right;">78</p> <p>1 B. Ullmann</p> <p>2 A. No.</p> <p>3 Q. You were the decision maker on</p> <p>4 minimums?</p> <p>5 A. No, the way it would work is that I</p> <p>6 would handle the dialogue. Once we had</p> <p>7 reached a meeting of the minds, I would</p> <p>8 then have to turn around and take, in this</p> <p>9 case, the document, the numbers, whatever</p> <p>10 it was and I make a presentation to Bob</p> <p>11 Skinner and he was the final decision</p> <p>12 maker.</p> <p>13 Q. Do you recall a discussion with</p> <p>14 Mr. Wiseman following receipt of what's</p> <p>15 been marked as Exhibit No. 1?</p> <p>16 A. I don't recall in this specific</p> <p>17 conversation. If you can frame the</p> <p>18 question differently, maybe.</p> <p>19 Q. Do you recall generally having</p> <p>20 discussions with Mr. Wiseman or anyone</p> <p>21 else from Tornado about an amendment?</p> <p>22 A. I don't recall having conversations</p> <p>23 with anyone but Issie. I do recall having</p> <p>24 some conversations with Issie; I don't</p> <p>25 specifically recall the line of detail.</p>	<p style="text-align: right;">80</p> <p>1 B. Ullmann</p> <p>2 have to do with this, but has to do with</p> <p>3 our Baby Phat licensee terminating the</p> <p>4 contract with a designated company that</p> <p>5 Issie is affiliated with or an owner of or</p> <p>6 part-owner of and thus causing them to</p> <p>7 lose Baby Phat for Canada and he was</p> <p>8 distraught. I do recall that. But I</p> <p>9 don't recall exactly when that was.</p> <p>10 I understand your line of</p> <p>11 questioning was what do I recall about</p> <p>12 this process and I apologize. I don't</p> <p>13 recall in great detail.</p> <p>14 MR. HOFFMAN: Off the</p> <p>15 record.</p> <p>16 (Whereupon a discussion was</p> <p>17 held off the record.)</p> <p>18 Q. Just so we're clear, you don't</p> <p>19 recall any detail whatsoever about any</p> <p>20 conversations between March of 2006 and a</p> <p>21 conversation you had in fall of '06</p> <p>22 regarding a Baby Phat licensee dispute</p> <p>23 involving Issie?</p> <p>24 I'm simply trying to get a</p> <p>25 chronology, if you will.</p>
<p style="text-align: right;">79</p> <p>1 B. Ullmann</p> <p>2 Q. Why don't you tell me about the</p> <p>3 next conversation that you do recall and</p> <p>4 tell me as much about that conversation as</p> <p>5 you are able.</p> <p>6 MR. HOFFMAN: I just object</p> <p>7 to the form on "next" because he</p> <p>8 may not remember that it's the next</p> <p>9 conversation. You've asked him</p> <p>10 about conversations he remembers.</p> <p>11 If he could put it in a context,</p> <p>12 fine.</p> <p>13 A. If you can ask specific questions,</p> <p>14 it would be helpful. I have no specific</p> <p>15 recollection that I can sit here and</p> <p>16 testify to.</p> <p>17 Q. From March of 2006 on, what is the</p> <p>18 next conversation that you can recall any</p> <p>19 substance of with Mr. Wiseman?</p> <p>20 MR. HOFFMAN: Objection to</p> <p>21 the form. You can answer.</p> <p>22 A. The next conversation that I can</p> <p>23 recall in any great detail -- in detail,</p> <p>24 is a conversation that takes place much</p> <p>25 later in the fall and that -- it does not</p>	<p style="text-align: right;">81</p> <p>1 B. Ullmann</p> <p>2 MR. HOFFMAN: I object to</p> <p>3 the form. You can answer if you</p> <p>4 understand it.</p> <p>5 A. I do recall having some</p> <p>6 conversations, but I can't materially</p> <p>7 recall any type of detail. I really</p> <p>8 cannot.</p> <p>9 Q. Can you generally recall any</p> <p>10 detail?</p> <p>11 A. No.</p> <p>12 Q. Did you discuss baseball?</p> <p>13 A. Probably not.</p> <p>14 Q. Did you discuss the amendment?</p> <p>15 A. I would say it's likely.</p> <p>16 Q. What did you discuss about the</p> <p>17 amendment?</p> <p>18 MR. HOFFMAN: Objection to</p> <p>19 the form on "amendment." It is</p> <p>20 what it is.</p> <p>21 A. I truly cannot recall specific</p> <p>22 details. If you ask specific questions,</p> <p>23 I'm happy to try, to the best of my</p> <p>24 ability, to answer.</p> <p>25 Q. Can you recall general details?</p>

<p style="text-align: right;">82</p> <p>1 B. Ullmann</p> <p>2 A. No, I don't.</p> <p>3 Q. You have no recollection of</p> <p>4 discussing the amendment with Mr. Wiseman?</p> <p>5 MR. HOFFMAN: Objection to</p> <p>6 form. He said without being</p> <p>7 refreshed. If you want to show him</p> <p>8 documents or ask him questions, he</p> <p>9 might be able to do so.</p> <p>10 A. Right --</p> <p>11 MR. OFFENHARTZ: You're</p> <p>12 answering for the witness and now</p> <p>13 he's going to repeat your answer.</p> <p>14 MR. HOFFMAN: I'm actually</p> <p>15 repeating his answer that he has</p> <p>16 given now on two occasions.</p> <p>17 Q. Mr. Ullmann, would you please</p> <p>18 answer my question.</p> <p>19 A. Can you repeat the question.</p> <p>20 MR. OFFENHARTZ: Read my</p> <p>21 question back, please.</p> <p>22 (Whereupon the record was</p> <p>23 read back by the reporter.)</p> <p>24 A. I have no specific recollection.</p> <p>25 But it speaks to, at the time -- just to</p>	<p style="text-align: right;">84</p> <p>1 B. Ullmann</p> <p>2 Q. Do you recall when that was?</p> <p>3 A. It was either the end of '06 or the</p> <p>4 beginning of '07. Somewhere -- I want to</p> <p>5 say somewhere between December of '06 and</p> <p>6 mid-February of '07. Prior, I think, to</p> <p>7 the MAGIC show of '07.</p> <p>8 Q. Do you recall other discussions</p> <p>9 with Mr. Wiseman regarding the potential</p> <p>10 amendment, in your perspective?</p> <p>11 A. Can you read the question or ask it</p> <p>12 again?</p> <p>13 Q. I'll re-ask it. I'm trying to kind</p> <p>14 of fill in the boxes on the chronology.</p> <p>15 A. I understand.</p> <p>16 Q. You mentioned a conversation end of</p> <p>17 '06, beginning of '07 with Mr. Wiseman</p> <p>18 regarding a license for Coogi.</p> <p>19 I'm asking you if you recall other</p> <p>20 conversations with Mr. Wiseman, of any</p> <p>21 nature, from the fall of '06 forward?</p> <p>22 A. Yes, that I do. I do recall</p> <p>23 additional conversation about the Baby</p> <p>24 Phat situation. I wasn't particularly</p> <p>25 close to it, but he asked for my</p>
<p style="text-align: right;">83</p> <p>1 B. Ullmann</p> <p>2 clarify, it was still just a dialogue. I</p> <p>3 wasn't in a serious negotiation at the</p> <p>4 time, which is why I didn't emerge myself</p> <p>5 in it.</p> <p>6 Q. You keep saying "no specific</p> <p>7 recollection"; I'm just asking what your</p> <p>8 general recollection is.</p> <p>9 A. Okay, I have no --</p> <p>10 Q. If you have no general</p> <p>11 recollection, then I won't keep asking.</p> <p>12 Do you see the distinction I'm drawing?</p> <p>13 A. Yes, I do I see it. I'm sorry</p> <p>14 then, I think I need to say I have no</p> <p>15 general recollection. I remember talking</p> <p>16 to him.</p> <p>17 Q. Mr. Ullmann, do you recall any</p> <p>18 conversations with Mr. Wiseman after the</p> <p>19 conversation you had in the fall of '06</p> <p>20 about the Baby Phat licensee dispute?</p> <p>21 A. I recall helping him getting a new</p> <p>22 license with a different company. I</p> <p>23 helped him obtain a license for a company</p> <p>24 called Coogi. It is my understanding he</p> <p>25 operates that license today.</p>	<p style="text-align: right;">85</p> <p>1 B. Ullmann</p> <p>2 assistance and I believe that in the end,</p> <p>3 that dispute was settled with some</p> <p>4 financial settlement.</p> <p>5 I also recall, at one point,</p> <p>6 advising him that we would not be going</p> <p>7 forward and when his license expired,</p> <p>8 there would be no amendments going forward</p> <p>9 and I remember a couple of conversations</p> <p>10 where Issie first was trying to argue and</p> <p>11 then plead and, ultimately, there were</p> <p>12 conversations where he recognized it -- he</p> <p>13 shared with me his views of the potential</p> <p>14 new licensee, some negative views; he</p> <p>15 shared with me that there was some history</p> <p>16 between Mr. Wiseman and Mr. Gaby Bitton.</p> <p>17 I was obviously unaware of all of</p> <p>18 that. And there were some conversations</p> <p>19 where he said, Hey, you know, if there's</p> <p>20 something you can throw me, maybe I can</p> <p>21 continue to do the shoes and do a good job</p> <p>22 with the shoes. I don't think Gaby is big</p> <p>23 in shoes; something like that. So those</p> <p>24 type of conversations.</p> <p>25 Q. I'm now going to ask you a few</p>

<p style="text-align: right;">86</p> <p>1 B. Ullmann</p> <p>2 questions just to try to put these</p> <p>3 recollections you have in some sort of</p> <p>4 time frame.</p> <p>5 When did you inform Mr. Wiseman</p> <p>6 that you would not be going forward with</p> <p>7 an amendment?</p> <p>8 A. I don't recall exactly, but I know</p> <p>9 it was prior to MAGIC in February of '07.</p> <p>10 Q. Do you recall how long that</p> <p>11 conversation was?</p> <p>12 A. No.</p> <p>13 Q. I'm assuming, from your description</p> <p>14 of the other conversations, they would</p> <p>15 have occurred after you informed that you</p> <p>16 weren't going forward?</p> <p>17 A. Yes.</p> <p>18 Q. Roughly how many of the</p> <p>19 conversations would you say there were of</p> <p>20 that nature?</p> <p>21 MR. HOFFMAN: Which nature?</p> <p>22 MR. OFFENHARTZ: Of the ones</p> <p>23 he described -- fair point. Let me</p> <p>24 ask that again.</p> <p>25 Q. How many conversations have you had</p>	<p style="text-align: right;">88</p> <p>1 B. Ullmann</p> <p>2 have any discussions with Mr. Wiseman from</p> <p>3 March of '06 through to December of '06,</p> <p>4 other than the one you described dealing</p> <p>5 with the Baby Phat licensee issue?</p> <p>6 A. Yes, I believe so.</p> <p>7 Q. How many would you say you had?</p> <p>8 A. At least a few.</p> <p>9 Q. A few being three to five, four to</p> <p>10 six, five to seven?</p> <p>11 A. Two to four; something like that.</p> <p>12 Q. Those two to four conversations are</p> <p>13 the ones you have no general recollection</p> <p>14 of?</p> <p>15 A. Correct.</p> <p>16 (Brief recess taken.)</p> <p>17 Q. Mr. Ullmann, do you recall</p> <p>18 Mr. Wiseman reaching out to you at any</p> <p>19 time from March of 2006 through February</p> <p>20 of 2007 and asking you where things were</p> <p>21 regarding the amendment to the license</p> <p>22 agreement?</p> <p>23 A. I don't recall the exact wording.</p> <p>24 I do recall having conversations. I mean,</p> <p>25 I do recall him reaching out to me and</p>
<p style="text-align: right;">87</p> <p>1 B. Ullmann</p> <p>2 with Mr. Wiseman after you informed him</p> <p>3 there would be no amendment or that you</p> <p>4 were not going to go forward with the</p> <p>5 amendment that you fully executed?</p> <p>6 MR. HOFFMAN: Objection to</p> <p>7 the form.</p> <p>8 A. Numerous, without being able to say</p> <p>9 exactly how many.</p> <p>10 Q. Again, numerous?</p> <p>11 A. More than three or four, but</p> <p>12 probably less than ten.</p> <p>13 Q. I understand that you don't</p> <p>14 recall -- you have no general recollection</p> <p>15 of any conversations with Mr. Wiseman from</p> <p>16 March of '06 through the fall when you</p> <p>17 discussed with him the Baby Phat licensee</p> <p>18 dispute.</p> <p>19 Do you recall how many</p> <p>20 conversations you had with him, if any?</p> <p>21 MR. HOFFMAN: Objection to</p> <p>22 the form on the prologue to that</p> <p>23 question.</p> <p>24 A. Can you please restate?</p> <p>25 Q. Let me ask it another way: Did you</p>	<p style="text-align: right;">89</p> <p>1 B. Ullmann</p> <p>2 inquiring, in general, the status maybe.</p> <p>3 Q. How many of those conversations do</p> <p>4 you recall taking place?</p> <p>5 A. I don't recall an exact number.</p> <p>6 I'm thinking it's a few conversations.</p> <p>7 Q. Three to five, two to four?</p> <p>8 A. Two, three.</p> <p>9 Q. Do you recall when these</p> <p>10 conversations were?</p> <p>11 A. No.</p> <p>12 Q. Do you recall, generally, what was</p> <p>13 discussed?</p> <p>14 A. I do recall speaking to</p> <p>15 Mr. Wiseman; I don't recall specifically</p> <p>16 or generally.</p> <p>17 Q. I'm teaching you how to be a</p> <p>18 witness. This is very frustrating for me.</p> <p>19 I'm sorry.</p> <p>20 A. That's okay.</p> <p>21 Q. You do recall, in a time period</p> <p>22 from March of 2006 through February of</p> <p>23 2007, that Mr. Wiseman and you spoke about</p> <p>24 the status of the amendment?</p> <p>25 A. I remember speaking to him.</p>

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1 B. Ullmann
 2 Q. The answer is yes?
 3 A. I do remember speaking to him.
 4 Q. About the status of the amendment?
 5 A. I do remember speaking to him. I
 6 do not recall what was discussed.
 7 Q. Do you recall discussing the status
 8 of the amendment, generally, specifically
 9 or otherwise?
 10 A. I don't recall it.
 11 Q. Do you recall any discussions where
 12 Mr. Wiseman said words to the effect of,
 13 "Bernt, when are you sending me the signed
 14 amendment"?
 15 A. I don't recall having a
 16 conversation along those lines.
 17 MR. OFFENHARTZ: Can you
 18 mark this as Defendant's Exhibit 2,
 19 please.
 20 (Whereupon Three-page
 21 exhibit, bearing the Bates numbers
 22 PF0130 through 0132 was marked
 23 Defendant's Exhibit 2 for
 24 identification as of this date.)
 25 Q. Mr. Ullmann, would you please take

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1 B. Ullmann
 2 this to Don Gramke with a cc to Peter
 3 Morris?
 4 A. I don't, but I'm going to have to
 5 think that I did.
 6 Q. I misspoke; it's forwarded to Don
 7 Gramke and Eli Nathanson. You'll see on
 8 the bottom of 0130.
 9 MR. HOFFMAN: Peter Morris,
 10 you said?
 11 MR. OFFENHARTZ: Cc'd to
 12 Peter Morris.
 13 A. Yes.
 14 Q. Why would you have forwarded this
 15 on to Don Gramke, Eli Nathanson with a cc
 16 to Peter Morris?
 17 A. Pretty standard operating procedure
 18 in the process of any type of negotiation
 19 or discussion. I don't want to be an
 20 island all to myself; I always want legal
 21 to be apprised of what is going on, as
 22 kind of like a cc, so I know that someone
 23 else is looking at it as well.
 24 Q. You received a question from
 25 Mr. Gramke; isn't that true?

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1 B. Ullmann
 2 a moment to review this document.
 3 A. Thank you.
 4 MR. OFFENHARTZ: I'll
 5 identify it somewhat for the
 6 record.
 7 It's a three-page exhibit,
 8 bearing the Bates numbers PF0130
 9 through 0132.
 10 Q. Have you had a chance to review it?
 11 A. I have.
 12 Q. Can you identify this document,
 13 please.
 14 A. It's a string of e-mails attached
 15 to the proposal that Issie Wiseman had
 16 forwarded in regards to the draft
 17 amendment of the agreement. And the
 18 proposal that was previously discussed,
 19 that is also attached.
 20 MR. HOFFMAN: Meaning DX1?
 21 THE WITNESS: Correct.
 22 Q. You mentioned that Cathy McGuiness
 23 was your secretary?
 24 A. Yes.
 25 Q. Do you recall asking her to forward

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1 B. Ullmann
 2 A. I can see that I did.
 3 Q. You answered his question?
 4 A. Correct.
 5 Q. Do you recall any discussions you
 6 had with Mr. Gramke about the status of
 7 the discussions with Tornado around this
 8 time?
 9 A. I do not.
 10 Q. I know I asked you this before, but
 11 I do not recall the answer. Do you recall
 12 when Mr. Gramke passed away?
 13 A. I do not. I'm sorry. --
 14 Q. Do you recall any discussions with
 15 Mr. Nathanson regarding this process at
 16 this time?
 17 MR. HOFFMAN: Object to the
 18 form, but you can answer that.
 19 It's a little vague.
 20 A. Again, if there is a specific
 21 question, I'm very happy to try to answer
 22 it. I cannot recall, in general, any
 23 conversation regarding --
 24 Q. Can you recall anything specific?
 25 A. Can you ask a specific question --

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1 B. Ullmann
2 no, I can't. I'm sorry. I wish I could.
3 Many years ago, I would, but no, I don't.
4 Q. Was there anyone on your team who
5 you were seeking input from on whether the
6 numbers provided by Mr. Wiseman made sense
7 or worked from Phat Fashions' perspective?
8 A. I don't think so. I could expand
9 upon the last question.
10 Q. Please.
11 A. And just as a clarification at this
12 stage, I don't believe it would be
13 anyone's Counsel I would be seeking at one
14 point. I would be presenting the numbers
15 to Bob Skinner and he was the ultimate
16 decision maker as to whether any deal made
17 sense to us.
18 Q. Mr. Ullmann, the document that
19 Mr. Wiseman prepared and sent to you, that
20 is in Defendant's Exhibit 1, it's -- I
21 don't know what you call it -- two
22 paragraphs -- it's a short little letter
23 format; is that correct?
24 A. Yes, sir.
25 Q. This is the one you had your

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1 B. Ullmann
2 assistant forward on to some of your
3 colleagues?
4 A. Yes.
5 Q. Again, it's a two, three-paragraph
6 letter.
7 MR. OFFENHARTZ: Can you
8 mark this as Defendant's Exhibit 3,
9 please.
10 (Whereupon Four-page
11 document, bearing the Bates numbers
12 PF0141 through 0144 was marked
13 Defendant's Exhibit 3 for
14 identification as of this date.)
15 A. Thank you very much.
16 Q. Would you please take a moment and
17 review what's been marked as Defendant's
18 Exhibit 3? --
19 A. Yes.
20 Q. Have you had a chance to review the
21 document?
22 A. I have.
23 Q. Have you seen this document before?
24 A. I have.
25 Q. When did you last see this

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1 B. Ullmann
2 document?
3 A. I can't, to say that we briefly
4 glanced at this document during the review
5 in preparation for today's deposition.
6 Q. On Tuesday?
7 A. On Tuesday, correct.
8 Q. Can you identify the three-page --
9 I'm sorry, the four-page document, bearing
10 the Bates numbers PF0141 through 0144?
11 A. Yes. It's the draft amendment to
12 the licensing agreement with Tornado.
13 There is a cover letter from Eli
14 Nathanson --
15 Q. We'll get to that, don't worry. I
16 know you're --
17 MR. OFFENHARTZ: Off the
18 record.
19 (Whereupon a discussion was
20 held off the record.)
21 Q. Who prepared the four-page document
22 that is attached to the cover e-mail?
23 A. I don't know, but my expectation is
24 that it's Eli Nathanson.
25 Q. Who directed Mr. Nathanson to

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1 B. Ullmann
2 prepare this document?
3 A. I did.
4 Q. Can you tell us, please, why you
5 asked Mr. Nathanson to prepare this
6 document?
7 A. It was in an attempt to continue to
8 advance the dialogue with Issie. I would
9 say fairly standard operating procedure.
10 And I might add, we have a number of draft
11 agreements that never get executed into a
12 final agreement.
13 Q. In fact, you would draw a sharp
14 distinction between agreements that are in
15 execution phase versus agreements that are
16 still awaiting comments; is that correct?
17 MR. HOFFMAN: Objection to
18 the form.
19 A. No, that's not the distinction. I
20 would draw a distinction between drafts
21 where we are having either dialogue or not
22 a final decision as to whether or not we
23 intend to excuse any documents that are
24 actually executed.
25 Q. I'm sorry, you're putting three

<p style="text-align: right;">98</p> <p>1 B. Ullmann</p> <p>2 categories, if I understand correctly?</p> <p>3 A. No.</p> <p>4 Q. Let me lay them out; you can tell</p> <p>5 me if I understand correctly or not -- you</p> <p>6 know, I'll come back to that.</p> <p>7 A. I'm happy to clarify it.</p> <p>8 MR. HOFFMAN: Let him come</p> <p>9 back to it.</p> <p>10 Q. I'll come back to it.</p> <p>11 MR. HOFFMAN: It's not like</p> <p>12 he's going to forget.</p> <p>13 THE WITNESS: But it's not</p> <p>14 like it's going to change.</p> <p>15 Q. Would you look at the second page</p> <p>16 of the amendment, which is the third page</p> <p>17 of the exhibit?</p> <p>18 A. Yes.</p> <p>19 Q. Would you compare the numbers on</p> <p>20 that page, which is PF0142, with the</p> <p>21 numbers on the second page of what's been</p> <p>22 marked as Exhibit 1?</p> <p>23 A. Yes. They appear to be identical,</p> <p>24 other than in this document, there is a</p> <p>25 minimum net sales provision that seems to</p>	<p style="text-align: right;">100</p> <p>1 B. Ullmann</p> <p>2 A. No direction. All -- again, all</p> <p>3 agreements state minimum net sales and</p> <p>4 minimum royalties. So it's automatic.</p> <p>5 Q. Do you recall upon whose direction</p> <p>6 Mr. Nathanson added in all of the other</p> <p>7 paragraphs and elements of this four-page</p> <p>8 document that were not present in</p> <p>9 Mr. Wiseman's half-page document?</p> <p>10 A. Each and every paragraph are</p> <p>11 standard paragraphs, except there is one,</p> <p>12 and I don't know where it is, but I know</p> <p>13 for a fact that since I was still in the</p> <p>14 early stages of this process, I reserved</p> <p>15 all rights to amend the amendment.</p> <p>16 Q. That's in this four-page amendment?</p> <p>17 A. I am thinking that it may not be in</p> <p>18 the amendment, but I am thinking that -- I</p> <p>19 thought I just saw it. Yes, here I saw</p> <p>20 it. So it is not in the amendment; it's</p> <p>21 in the cover letter, actually.</p> <p>22 Q. Mr. Ullmann, you asked</p> <p>23 Mr. Nathanson to take Mr. Wiseman's form</p> <p>24 in Defendant's 1 and turn it into this</p> <p>25 four-page document, correct?</p>
<p style="text-align: right;">99</p> <p>1 B. Ullmann</p> <p>2 be missing from the proposal that was</p> <p>3 received from Tornado.</p> <p>4 MR. HOFFMAN: When you say</p> <p>5 "this document," you're referring</p> <p>6 to the attachment to DX3?</p> <p>7 A. Did I answer it correctly?</p> <p>8 Q. Yes. Mr. Ullmann, which document,</p> <p>9 Exhibit 1 or Exhibit 3, has the minimum</p> <p>10 net sales?</p> <p>11 A. Exhibit 3 has the minimum net</p> <p>12 sales.</p> <p>13 Q. Mr. Ullmann, Issie Wiseman did not</p> <p>14 include minimum net sales figures in his</p> <p>15 version of this writing that he sent you</p> <p>16 on March 1st; did he?</p> <p>17 A. It appears that he didn't.</p> <p>18 Q. I'm sorry, I couldn't hear you.</p> <p>19 A. It appears that he did not.</p> <p>20 Q. Mr. Nathanson included minimum net</p> <p>21 sales in his version; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Do you recall upon whose direction</p> <p>24 Mr. Nathanson was relying for including</p> <p>25 the minimum net sales?</p>	<p style="text-align: right;">101</p> <p>1 B. Ullmann</p> <p>2 A. Yes.</p> <p>3 MR. HOFFMAN: Objection to</p> <p>4 the form.</p> <p>5 A. It is correct.</p> <p>6 Q. Do you recall what Mr. Nathanson</p> <p>7 asked you that should be included in the</p> <p>8 four-page document?</p> <p>9 A. I don't have a recollection of what</p> <p>10 specifically he may have asked. I assume</p> <p>11 he must have had some questions, but I</p> <p>12 don't recall. It would be normal that he</p> <p>13 had some questions.</p> <p>14 Q. Do you recall any discussions with</p> <p>15 Mr. Wiseman in the days following Monday,</p> <p>16 March 20th when Eli Nathanson sent him</p> <p>17 this amendment?</p> <p>18 A. Can you repeat that.</p> <p>19 MR. OFFENHARTZ: Can you</p> <p>20 read the question back, please.</p> <p>21 (Whereupon the record was</p> <p>22 read back by the reporter.)</p> <p>23 MR. HOFFMAN: Do we know</p> <p>24 that March 20th was a Monday?</p> <p>25 MR. OFFENHARTZ: Did I say</p>

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1 B. Ullmann
2 Monday?
3 MR. HOFFMAN: Yes.
4 MR. OFFENHARTZ: Actually,
5 it does indeed say Monday, March
6 20th.
7 Q. Let me ask it again: Does this
8 refresh your recollection that you had any
9 discussions with Mr. Wiseman in March or
10 April regarding the amendment of the
11 license agreement?
12 A. I recall having conversations with
13 Issie, but I do not recall what we
14 discussed.
15 MR. OFFENHARTZ: Can you
16 mark this as Defendant's Exhibit 4,
17 please.
18 (Whereupon Six-page
19 document, bearing the Bates numbers
20 PF0147 through 0152 was marked
21 Defendant's Exhibit 4 for
22 identification as of this date.)
23 Q. Mr. Ullmann, I've handed you a
24 six-page document; bearing the Bates
25 numbers PF0147 through 0152.

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1 B. Ullmann
2 Will you take a moment to review
3 it, please?
4 A. Sure.
5 Q. Have you had a chance to look at
6 it?
7 A. Yes.
8 Q. Can you identify this document,
9 please.
10 A. It's a copy of what appears to be
11 the draft amendments with the signature by
12 Issie Wiseman. There is a brief cover
13 letter on top to Mr. Nathanson and there
14 is a FedEx slip at the back, I guess,
15 documenting that something -- presumably
16 this document -- was delivered to Pryor
17 Cashman.
18 Q. Would you turn to PF0149, please?
19 A. Yes.
20 Q. Would you look at page PF0142 of
21 Exhibit 3?
22 A. Yes.
23 Q. The numbers do match up, don't
24 they?
25 A. They do.

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1 B. Ullmann
2 Q. Do you recall having a discussion
3 with Mr. Nathanson at the end of March,
4 March 29th or March 30th, regarding a
5 discussion that Barry Segal had with
6 Mr. Nathanson?
7 A. No, I don't recall it.
8 Q. It's true, isn't it, that Mr. Segal
9 of Tornado says in his letter, "Dear
10 Mr. Nathanson: It was a pleasure speaking
11 with you yesterday"?
12 A. It does say that.
13 Q. Do you have any knowledge of that
14 conversation that took place between
15 Mr. Segal and Mr. Nathanson?
16 A. I cannot recall that there was such
17 a conversation. I see it; it must have
18 taken place. I don't recall.
19 Q. Do you recall Mr. Nathanson calling
20 you up and saying, Hey, I just spoke to
21 Barry Segal of Tornado, he said "X"?
22 A. No, I don't recall.
23 Q. You indicated that you rely on
24 Mr. Nathanson, correct?
25 MR. HOFFMAN: Objection to

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1 B. Ullmann
2 the form.
3 A. He is outside Counsel.
4 Q. You rely on him?
5 MR. HOFFMAN: Objection to
6 the form. For what?
7 Q. Can you answer the question? If
8 you can't answer the question, tell me you
9 can't answer it; that's okay.
10 A. I do rely upon -- it's a very
11 open-ended question. I do rely upon him
12 in legal matters, yes.
13 Q. You were relying on him regarding
14 the discussions with Tornado to prepare
15 documents?
16 A. Exactly, to prepare documents, yes.
17 Q. At your instructions, Mr. Nathanson
18 prepared the document that was sent to
19 Issie Wiseman and Barry Segal, correct?
20 A. Correct.
21 Q. Mr. Nathanson had a discussion with
22 Mr. Segal and a day later, Mr. Segal
23 returned an executed copy of that
24 amendment?
25 MR. HOFFMAN: I object to

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1 B. Ullmann
2 Q. As well as Mr. Nathanson?
3 A. Or instead of Mr. Nathanson.
4 Q. Another person cc'd on this is Don
5 Gramke?
6 A. Yes.
7 Q. Just to clarify the record, prior
8 to his death, Mr. Gramke was an in-house
9 lawyer at Kellwood, correct?
10 A. That is correct.
11 Q. You thought Mr. Gramke was a
12 capable lawyer?
13 MR. HOFFMAN: Asked and
14 answered.
15 A. Yes.
16 Q. Turning back to Defendant's Exhibit
17 No. 4. In March of 2006, who would have
18 been giving Mr. Nathanson instructions on
19 how to deal with Tornado?
20 A. That question is too open. If you
21 mean business-wise, I would. I do not
22 know if Mr. Nathanson was getting legal
23 direction from within the firm.
24 Q. Who would have been giving
25 Mr. Nathanson instruction on the status of

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1 B. Ullmann
2 your discussions with Mr. Wiseman
3 regarding the amendment?
4 A. I would.
5 Q. Who would have been giving
6 Mr. Nathanson instructions on who needs to
7 sign an amendment or review an amendment
8 within your company?
9 A. No instruction needed. Standard
10 operating procedure would be that every
11 single agreement, amendment, renewal
12 required two signatures at the time; the
13 signatures of Bob Skinner and Russell
14 Simmons.
15 Q. Mr. Ullmann, can you please tell me
16 where, in this four-page document, PF0148
17 through 0151, it indicates that two
18 signatures are required?
19 A. Well, I would say if one goes to
20 PF0151 and you look under Phat Fashions,
21 LLC, there are clearly two signature lines
22 and only one for Tornado.
23 Q. Is there any writing or a part of
24 this agreement that indicates there must
25 be two signatures for Phat Fashions?

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1 B. Ullmann
2 MR. HOFFMAN: Objection to
3 the form. He just answered that
4 question.
5 MR. OFFENHARTZ: No, that is
6 a signature block. I'm asking
7 other than a signature block?
8 MR. HOFFMAN: Now you're
9 asking other than a signature
10 block.
11 Q. Mr. Ullmann, other than a signature
12 block, can you identify where, in this
13 agreement, it requires two signatures for
14 Phat Fashions?
15 A. This document stipulates the
16 business terms and I do not think that it
17 would need to address -- that's one of our
18 requirements; one of Phat Fashions'
19 requirements were two signatures.
20 Q. What are your bases for saying Phat
21 Fashions had a requirement for two
22 signatures?
23 A. Question not understood.
24 Q. How did you come to know that -- is
25 there anything in Phat Fashions' bylaws

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1 B. Ullmann
2 that requires two signatures for an
3 amendment to a license agreement?
4 A. I have not seen our bylaws, so I
5 wouldn't know. I will know or I do know
6 that Phat Fashions is a Kellwood company
7 and it's a requirement that is in every
8 legal document, is signed both by or at
9 this time as the -- Russell Simmons as the
10 CEO of Phat Fashions or Bob Skinner in his
11 capacity as our highest officer and, of
12 course, now also chairman of a Kellwood
13 company.
14 Q. Can you identify the writing that
15 requires two signatures?
16 A. Oh, I think I can; the signature,
17 please.
18 Q. Can you identify the Kellwood
19 procedure manual that requires two
20 signatures?
21 A. No.
22 Q. Have you ever seen a Kellwood
23 document that mandates that Phat Fashions
24 must have two signatures on an amendment?
25 A. I know it as a fact that we require

<p style="text-align: right;">114</p> <p>1 B. Ullmann</p> <p>2 two signatures.</p> <p>3 Q. Mr. Ullmann, my question was</p> <p>4 directed to: Can you identify a writing</p> <p>5 of Kellwood, a procedures manual, a</p> <p>6 contract governance manual, a rules for</p> <p>7 contracting a Kellwood memorandum, that</p> <p>8 would state that there must be two</p> <p>9 signatures?</p> <p>10 A. It's entirely possible that this</p> <p>11 exists. I haven't seen it, but relied</p> <p>12 upon the words of my colleagues.</p> <p>13 Q. Which colleagues told you that this</p> <p>14 was required?</p> <p>15 A. That would be Bob Skinner, my boss,</p> <p>16 and most senior executive of Kellwood.</p> <p>17 Q. In this four-page document, PF0148</p> <p>18 through PF0151, can you point out to me</p> <p>19 who the parties to this amendment are?</p> <p>20 MR. HOFFMAN: The object</p> <p>21 speaks for itself, but he can</p> <p>22 answer.</p> <p>23 A. Yes. The parties are Phat</p> <p>24 Fashions, LLC and Tornado Imports.</p> <p>25 Q. Would you turn to the signature</p>	<p style="text-align: right;">116</p> <p>1 B. Ullmann</p> <p>2 Q. Then please tell me who the parties</p> <p>3 are?</p> <p>4 A. Bob Skinner, Russell Simmons.</p> <p>5 Q. They are parties to this agreement?</p> <p>6 A. Let's back up. Several questions</p> <p>7 ago, you asked who were the parties; I</p> <p>8 believe it was answered, it's answered by</p> <p>9 the document. I thought we were focusing</p> <p>10 on the signature block.</p> <p>11 Q. I'm asking you: In the signature</p> <p>12 block --</p> <p>13 A. If you asked me if it is clear to</p> <p>14 me, and it is clear to me, that the</p> <p>15 signatures on behalf of Phat Fashions is</p> <p>16 Bob Skinner and Russell Simmons.</p> <p>17 MR. OFFENHARTZ: Move to</p> <p>18 strike as not responsive.</p> <p>19 Q. Mr. Ullmann, as this case</p> <p>20 progresses, you'll have many opportunities</p> <p>21 to answer questions directly from your</p> <p>22 Counsel, but the way a deposition works is</p> <p>23 you should answer the questions I ask.</p> <p>24 A. I apologize. I misunderstood.</p> <p>25 MR. HOFFMAN: I think that</p>
<p style="text-align: right;">115</p> <p>1 B. Ullmann</p> <p>2 block on PF0151. The signature block; can</p> <p>3 you please tell me who the parties are per</p> <p>4 this signature block?</p> <p>5 A. Phat Fashions, LLC and then two</p> <p>6 legally-binding signatures.</p> <p>7 Q. The two parties to this agreement</p> <p>8 per the signature block are?</p> <p>9 Mr. Ullmann, you do just have to</p> <p>10 answer the question.</p> <p>11 A. Per the signature block, it's not</p> <p>12 clear.</p> <p>13 MR. HOFFMAN: Can I help?</p> <p>14 MR. OFFENHARTZ: No.</p> <p>15 Q. Mr. Ullmann, as you read the</p> <p>16 signature block and I really do want this</p> <p>17 to be clear, there is -- one last</p> <p>18 question. --</p> <p>19 Mr. Ullmann, as you read this</p> <p>20 document, it is not clear to you who the</p> <p>21 parties are?</p> <p>22 MR. HOFFMAN: Objection to</p> <p>23 the form.</p> <p>24 A. It's clear to me who the parties</p> <p>25 are.</p>	<p style="text-align: right;">117</p> <p>1 B. Ullmann</p> <p>2 is really what happened.</p> <p>3 A. I fully misunderstood.</p> <p>4 Q. Looking at this signature block,</p> <p>5 who do you understand the parties to this</p> <p>6 agreement to be?</p> <p>7 A. Phat Fashions, LLC and Tornado</p> <p>8 Imports. I apologize, I most definitely</p> <p>9 misunderstood. I apologize.</p> <p>10 Q. Mr. Ullmann, given that, in your</p> <p>11 perspective -- well, Mr. Ullmann, do you</p> <p>12 recall seeing this document signed by</p> <p>13 Issie on March 30, 2006? --</p> <p>14 MR. HOFFMAN: DX4?</p> <p>15 MR. OFFENHARTZ: Yes.</p> <p>16 A. I don't recall actually having seen</p> <p>17 it. I'm not certain if I've seen it ever</p> <p>18 with a signature.</p> <p>19 Q. Including on Tuesday?</p> <p>20 A. Including on Tuesday. I don't</p> <p>21 recall seeing it.</p> <p>22 Q. Do you recall telling Mr. Nathanson</p> <p>23 what he should do with this document;</p> <p>24 Defendant's Exhibit 4?</p> <p>25 A. No, I don't recall.</p>

<p style="text-align: right;">118</p> <p>1 B. Ullmann</p> <p>2 Q. Do you know what Mr. Nathanson did</p> <p>3 with this document?</p> <p>4 A. I don't know, but I have an</p> <p>5 expectation of what he should have done.</p> <p>6 Q. Please tell me what he should have</p> <p>7 done with it?</p> <p>8 A. My expectation is that he would</p> <p>9 have forwarded it to Peter Morris.</p> <p>10 Q. What would he have asked Mr. Morris</p> <p>11 to do?</p> <p>12 MR. HOFFMAN: Objection to</p> <p>13 the form. What should he have</p> <p>14 asked Mr. Morris to do?</p> <p>15 I object to the form. It's</p> <p>16 a hypothetical question.</p> <p>17 THE WITNESS: Everything is</p> <p>18 hypothetical because I don't know</p> <p>19 it.</p> <p>20 MR. OFFENHARTZ: Can you</p> <p>21 read back the witness' answer. I</p> <p>22 was simply asking you to elaborate</p> <p>23 on your answer.</p> <p>24 (Whereupon the record was</p> <p>25 read back by the reporter.)</p>	<p style="text-align: right;">120</p> <p>1 B. Ullmann</p> <p>2 have documents executed without your</p> <p>3 permission, would you?</p> <p>4 MR. HOFFMAN: Objection to</p> <p>5 the form. By whom?</p> <p>6 MR. OFFENHARTZ: Let me ask</p> <p>7 the question again.</p> <p>8 MR. HOFFMAN: That would be</p> <p>9 good.</p> <p>10 MR. OFFENHARTZ: Why don't</p> <p>11 you mark this as Defendant's</p> <p>12 Exhibit No. 5 -- I withdraw the</p> <p>13 question.</p> <p>14 Q. This is Defendant's Exhibit No. 5.</p> <p>15 A. Thank you.</p> <p>16 Q. Take a moment please to review this</p> <p>17 document.</p> <p>18 A. Yes.</p> <p>19 MR. OFFENHARTZ: This is a</p> <p>20 document bearing the Bates number</p> <p>21 PF0153 through 0157.</p> <p>22 MR. HOFFMAN: They were not</p> <p>23 produced to you attached this way.</p> <p>24 The document that is 154 through</p> <p>25 157 was produced separately, as was</p>
<p style="text-align: right;">119</p> <p>1 B. Ullmann</p> <p>2 Q. My question to you is: Why is that</p> <p>3 your expectation?</p> <p>4 A. Well, that would be typically how</p> <p>5 we treat the paper flow.</p> <p>6 Q. What would you expect Mr. Nathanson</p> <p>7 to ask Mr. Morris to do?</p> <p>8 A. Well, Nathanson is not really in a</p> <p>9 position to ask Peter Morris to do</p> <p>10 anything. But my expectation is, again,</p> <p>11 that Peter Morris, upon receipt of such a</p> <p>12 document, would typically start a</p> <p>13 processing. He would circulate it.</p> <p>14 And what would -- well -- but in</p> <p>15 the hypothetical, I don't know that this</p> <p>16 happened, so I have to be very clear.</p> <p>17 MR. HOFFMAN: Since there</p> <p>18 are documents covering all this,</p> <p>19 why do we have to play the guessing</p> <p>20 games? Really.</p> <p>21 THE WITNESS: You know what</p> <p>22 happened? I'm the only one that</p> <p>23 doesn't.</p> <p>24 Q. Don't worry, you will soon. You</p> <p>25 would never expect one of your lawyers to</p>	<p style="text-align: right;">121</p> <p>1 B. Ullmann</p> <p>2 page 153 and you're giving it to</p> <p>3 him stapled and they were not</p> <p>4 produced to you that way, and I</p> <p>5 know that because I did the</p> <p>6 production and these documents have</p> <p>7 never been attached together. So</p> <p>8 this really should be two separate</p> <p>9 exhibits.</p> <p>10 MR. OFFENHARTZ: What we're</p> <p>11 going to do is turn these into two</p> <p>12 exhibits. Let me have it back.</p> <p>13 We'll start with Defendant's</p> <p>14 Exhibit 5, which remains as, now, a</p> <p>15 one-page document. Defendant's</p> <p>16 Exhibit 5 is PF0153, a one-page</p> <p>17 document.</p> <p>18 (Whereupon PF0153, a</p> <p>19 one-page document was marked</p> <p>20 Defendant's Exhibit 5 for</p> <p>21 identification as of this date.)</p> <p>22 Q. Can you identify this document,</p> <p>23 please?</p> <p>24 A. It appears to be a letter from Eli</p> <p>25 Nathanson to Peter Morris and it's</p>

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1 B. Ullmann
 2 regarding the receipt of a signed
 3 amendment and Eli's expectation of us
 4 following standard operating procedures in
 5 processing.
 6 Q. You just mentioned standard
 7 operating procedures in processing; what
 8 is the standard operating procedures in
 9 processing?
 10 A. Peter would physically be
 11 responsible for getting the first
 12 signature, which is Russell Simmons.
 13 Q. It was Eli's expectation, on
 14 April 5th, that apparently that's what
 15 Peter would do; is that correct?
 16 MR. HOFFMAN: Objection to
 17 the form.
 18 A. Looking at this exhibit, it appears
 19 to be his expectation.
 20 Q. You're cc'd on this letter, aren't
 21 you?
 22 A. I am.
 23 Q. Do you recall reviewing or
 24 receiving this letter?
 25 A. I don't recall.

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1 B. Ullmann
 2 Q. You mentioned that Mr. Morris would
 3 get Mr. Simmons' signature. Mr. Nathanson
 4 appears, through this letter, to be
 5 expecting Mr. Morris to get whatever
 6 signatures might be required.
 7 If you look at the second
 8 paragraph, would you agree?
 9 A. I agree, but it's not accurate.
 10 MR. HOFFMAN: Objection to
 11 the form as well.
 12 A. His expectation is incorrect.
 13 Q. Can you explain to me how his
 14 expectation is incorrect?
 15 A. Whenever we are preparing to fully
 16 execute an agreement, Kelliwood legal would
 17 prepare an executive summary. The
 18 executive summary is then prepared back to
 19 me. I initial it to say that it's okay
 20 and then I will have to, after an
 21 executive summary is done, present the
 22 full set of circumstances to Bob Skinner
 23 and, most likely, then Kelliwood legal
 24 would present the document to Bob for
 25 signature thereafter.

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1 B. Ullmann
 2 So there are many steps between
 3 this cover letter and a fully-executed
 4 agreement. But Eli wouldn't necessarily
 5 know because he was not part of that
 6 process.
 7 Q. Per this letter, Mr. Nathanson
 8 certainly expected that the amendment
 9 would be executed; isn't that correct?
 10 MR. HOFFMAN: Objection to
 11 the form.
 12 A. I can't speak to Mr. Nathanson's
 13 expectation.
 14 Q. Can you read into the record what
 15 the second paragraph states?
 16 A. "Please arrange to have
 17 countersigned where indicated and return
 18 one fully-executed original to me. Please
 19 keep one original for your records.
 20 Thanks."
 21 Q. How long have you been in business?
 22 A. Overall?
 23 Q. Since you graduated in '85, right?
 24 A. That would be accurate.
 25 Q. It's a lot of years?

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1 B. Ullmann
 2 A. Yes.
 3 Q. I graduated from college in that
 4 year, I know.
 5 MR. HOFFMAN: He had to say
 6 that.
 7 A. Exactly, thank you. Point
 8 well-taken.
 9 Q. As you sit here right now reading
 10 this, is there really any doubt in your
 11 mind that Eli's expectation in writing
 12 this letter was to have the amendment
 13 fully executed?
 14 MR. HOFFMAN: Objection to
 15 the form.
 16 A. I'm happy to answer. Eli Nathanson
 17 is an outside Counsel. I can't speak to
 18 his expectation, but it doesn't matter.
 19 Q. I understand your position. What
 20 I'm asking you is: Reading that second
 21 paragraph, is there any doubt in your mind
 22 that the person who wrote that fully
 23 anticipated that the amendment would be
 24 executed and returned to them?
 25 MR. HOFFMAN: Same

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1 B. Ullmann
2 required two signatures and since I hadn't
3 presented anything to Bob Skinner, Bob
4 Skinner obviously hadn't executed
5 anything; hence, it's not a
6 legally-binding document.
7 Q. Can you think of any other example
8 of Mr. Simmons executing a document on
9 behalf of Phat Fashions where, in your
10 opinion, the document was never -- never
11 received any additional signatures that,
12 in your view, were required?
13 MR. HOFFMAN: Objection to
14 the form.
15 A. I wasn't even aware of the fact
16 that he signed this one.
17 Q. You became aware of it in the fall
18 of 2006, which is almost a year ago?
19 MR. HOFFMAN: Objection to
20 the form.
21 A. Yes.
22 Q. You've been the president of Phat
23 Fashions since February of 2004, correct?
24 A. Yes.
25 Q. In your time at Phat Fashions, are

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1 B. Ullmann
2 you aware of any other instance in which
3 the CEO of Phat Fashions, Russell Simmons,
4 executed a document that, in your view,
5 still required an additional signature to
6 be fully executed?
7 MR. HOFFMAN: Objection to
8 the form.
9 A. You need to restate the last part
10 of the question; am I aware of -- can you
11 restate it?
12 MR. OFFENHARTZ: Can you
13 read the question back, please.
14 (Whereupon the record was
15 read back by the reporter.)
16 A. The answer is yes.
17 Q. Can you tell me what those examples
18 are?
19 A. It would be every single agreement
20 that we ever signed. There wasn't one
21 single agreement that didn't require more
22 than Russell Simmons' signature.
23 MR. HOFFMAN: That was the
24 way you asked the question.
25 Q. Are there any instances that you

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1 B. Ullmann
2 are aware of, like this one, where you
3 contend Mr. Simmons signed an a agreement
4 that he should not have signed?
5 MR. HOFFMAN: Objection to
6 the form.
7 MR. OFFENHARTZ: Let me
8 start over.
9 Q. Can you think of any other
10 situation in which Phat Fashions took the
11 position that it did not have a contract
12 with a party because Mr. Simmons signed
13 the amendment or contract, but Mr. Skinner
14 did not?
15 MR. HOFFMAN: Objection to
16 the form. You can answer.
17 A. I can think of a number of
18 instances where Russell Simmons would have
19 signed an agreement, an amendment and
20 there would be a long time that passed
21 between when Russell Simmons signed and it
22 was presented to Bob Skinner for
23 signature.
24 In that period, these agreements --
25 that would be all the agreements would

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1 B. Ullmann
2 have one signature on it, just like this
3 agreement, Russell Simmons, and it
4 wouldn't have a second. Whether or not
5 any of those documents ultimately were not
6 signed by Bob Skinner, I cannot recall.
7 Q. Do you think that ever happened?
8 MR. HOFFMAN: Objection to
9 the form.
10 A. It's possible.
11 Q. You can't think of an example?
12 A. It's possible.
13 Q. You cannot think of an example?
14 A. I cannot think of an example right
15 here without reviewing records. As I
16 said, every single contract is at one
17 stage, at the stage that this was on.
18 Q. Who, at the company, would know the
19 answer to that question?
20 MR. HOFFMAN: The question
21 about examples?
22 MR. OFFENHARTZ: Yes.
23 A. I don't know that anyone would know
24 offhand, but upon review of records, I
25 would say maybe possibly Luther Rollins,

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1 B. Ullmann
2 MR. OFFENHARTZ: Let's talk
3 protective order a little later in
4 the day. I'll come back to this
5 question after we talk about it.
6 No reason to --
7 MR. HOFFMAN: I think you
8 got the gist of where he was going
9 with it anyway.
10 Q. You don't recall receiving this
11 Saturday, April 22nd e-mail, do you?
12 MR. HOFFMAN: Exhibit 8?
13 MR. OFFENHARTZ: Exhibit 8.
14 Q. You need to answer audibly.
15 A. At this point, I'm still talking to
16 myself. I don't recall it.
17 Q. Mr. Ullmann, was it your practice
18 to correct your colleagues when they did
19 not understand the status of a given
20 project?
21 MR. HOFFMAN: Objection to
22 the form.
23 A. Not really because the process was
24 such that any misunderstandings, errors or
25 unclarities would be cleared up in the

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1 B. Ullmann
2 Issie Wiseman in April or May regarding
3 the status of the licensee amendment
4 agreement?
5 MR. HOFFMAN: Objection.
6 Asked and answered.
7 MR. OFFENHARTZ: I'm seeing
8 if perhaps, as time passes --
9 MR. HOFFMAN: I know, I'm
10 putting my objection on. He can
11 answer.
12 A. No, I do recall having had
13 conversations; I cannot recall,
14 specifically or generally, what was
15 discussed.
16 Q. Was the amendment discussed in
17 April or May?
18 A. It's possible.
19 Q. Do you remember what that
20 conversation was?
21 A. I'm sorry, I don't.
22 Q. Do you recall Issie asking you
23 words to the effect of, Bernt, where are
24 we? Waiting on the signature page; what's
25 going on?

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1 B. Ullmann
2 final stage, which involved executive
3 summary initially and then, ultimately,
4 Bob Skinner's signature.
5 Q. To the best of your recollection,
6 on Saturday, April 22, 2006, did you
7 believe that the Tornado licensee
8 agreement amendment was completely done
9 and all it needed was Bob's signature?
10 MR. HOFFMAN: Objection to
11 the form.
12 A. I don't recall.
13 Q. Let me ask you this way: Had you
14 read this e-mail on April 22nd, would you
15 have thought that Mr. Morris had made a
16 mistake?
17 MR. HOFFMAN: Objection to
18 the form. Mistake about what?
19 Q. Mr. Ullmann, you can answer the
20 question.
21 MR. HOFFMAN: Objection to
22 the form.
23 A. No. No, it doesn't look like a
24 mistake.
25 Q. Do you recall any discussions with

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1 B. Ullmann
2 A. I don't recall that.
3 Q. When I say "words to the effect,"
4 please don't -- do us all a favor: Don't
5 be thinking, All right, I never heard him
6 use those exact words. I'm trying to get
7 your testimony.
8 A. I understand. I understand the
9 nature of the question and I'm trying to
10 give you a truthful response. The
11 truthful response is I don't recall. It
12 doesn't mean it didn't happen; it means I
13 don't recall.
14 Q. Mr. Ullmann, what was your
15 understanding, say on April 22, 2006, of
16 the status of the licensee agreement
17 amendment?
18 A. Again, I don't recall.
19 MR. OFFENHARTZ: Can you
20 mark this, please, as Exhibit 9.
21 (Whereupon E-mail from
22 witness to Mr. Gramke was marked
23 Defendant's Exhibit 9 for
24 identification as of this date.)
25 Q. Mr. Ullmann, I'm handing you what's

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1 B. Ullmann
 2 been marked as Exhibit 9.
 3 A. Thank you.
 4 Q. You're welcome. Can you please
 5 take a moment to review the document.
 6 MR. HOFFMAN: When I
 7 produced it, it did have the
 8 attachments with it. The
 9 attachments are numbered, if you
 10 need them, 169 to 175. I'm not
 11 saying that's for the question; I'm
 12 just pointing it out.
 13 A. I'm done reviewing it.
 14 Q. The top part of this e-mail is an
 15 e-mail from you to Mr. Gramke; is that
 16 correct?
 17 A. Yes, it is.
 18 Q. You cc Peter Morris and Annie
 19 Walker?
 20 A. I can see I am doing that.
 21 Q. You write that, "Don: Bob has
 22 asked me to hold off on Canada," in the
 23 first sentence of the e-mail; do you see
 24 that?
 25 A. Yes.

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1 B. Ullmann
 2 Q. I've read that correctly?
 3 A. Yes.
 4 Q. Do you recall a discussion with Bob
 5 Skinner to which you were referring in
 6 this e-mail?
 7 A. I don't.
 8 Q. Do you recall writing this e-mail?
 9 A. I don't.
 10 Q. Do you recall anything about the
 11 discussion you had with Mr. Skinner that
 12 led you to write this e-mail?
 13 A. I do not recall our conversation.
 14 Q. Do you recall why Mr. Skinner asked
 15 you to hold off on Canada?
 16 A. I don't know why.
 17 Q. Let me clarify. You just said you
 18 don't know why; does that mean you don't
 19 remember why or he never told you why?
 20 MR. HOFFMAN: With respect
 21 to this e-mail?
 22 Q. With respect to this e-mail.
 23 A. With respect to this e-mail, I
 24 don't know why.
 25 Q. What is the basis for that answer?

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1 B. Ullmann
 2 MR. HOFFMAN: Objection to
 3 the form.
 4 Q. You can answer.
 5 A. I'm thinking, to make sure I'm
 6 giving an accurate answer. I truly --
 7 he's the chairman of the company. I don't
 8 believe that he shared it with me; I think
 9 simply he said hold off.
 10 Q. Is that a recollection of yours or
 11 is that less than a recollection, but it's
 12 a -- you earlier said you just don't
 13 recall the conversation that led you to
 14 write this. I'm trying to get the basis
 15 for what you just said. Help me out,
 16 please.
 17 A. It's true. My belief, which is the
 18 best I can say, is that Bob didn't share
 19 with me, at the time, his thoughts or
 20 reasons for wanting to hold off.
 21 Q. Prior to Bob Skinner asking you to
 22 hold off on Canada, you were prepared to
 23 move forward on Canada; were you not?
 24 MR. HOFFMAN: Objection to
 25 the form.

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1 B. Ullmann
 2 A. I had been engaging in a dialogue
 3 in good faith with Issie Wiseman and
 4 Tornado and I was preparing to move
 5 forward. I think I want to -- I need to
 6 kind of clarify some process here.
 7 I hadn't, at this point, fully
 8 wrapped my hands around it yet. So it's
 9 true that I had advanced it to this stage
 10 in good faith. I was now going to prepare
 11 to actually take on all the facts and go
 12 and present it to Bob Skinner, my boss,
 13 the chairman of the company.
 14 I hadn't fully done that yet. So I
 15 would say that through this process, I
 16 acted in good faith; I advanced the
 17 process through. I can't say that I had
 18 full ownership yet because I hadn't gone
 19 in front of him to present it.
 20 Q. Prior to Mr. Skinner informing you
 21 to hold off on Canada, you were preparing
 22 to continue the process and move forward
 23 on Canada with Tornado; is that correct?
 24 MR. HOFFMAN: Objection to
 25 the form.

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1 B. Ullmann

2 A. The process is such that it is

3 taken to an executive summary and then

4 it's presented to Bob and then a decision

5 is made as to how we proceed. So I was,

6 indeed, proceeding toward that stage,

7 knowing full-well that at that stage, the

8 final decision regarding how we would be

9 proceeding would be made. It could be

10 that we proceeded and concluded or we had

11 to go back and revisit or it could be

12 rejected.

13 Q. What was your expectation on

14 April 22, 2006, about where this process

15 would end up?

16 MR. HOFFMAN: April 22nd?

17 MR. OFFENHARTZ: I can ask

18 about April 22nd. Fair point.

19 Fair point.

20 Q. On May 23rd of 2006, to the extent

21 you recall, your expectation was that you

22 would be renewing with Tornado; wasn't it?

23 MR. HOFFMAN: Objection to

24 the form.

25 A. No, I had no such expectations.

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1 B. Ullmann

2 No, that is not accurate. I knew exactly

3 what the process was. My expectation was

4 simply to advance this so I can present it

5 to Bob and that was my only expectation.

6 I could not speak to what Bob Skinner

7 might decide to do and hence, I didn't

8 have expectation as to how anything would

9 end up.

10 I mean, I presented deals to him

11 that were executed, completely unchanged.

12 I have had deals where I had to go back

13 and revisit numbers and I have had deals,

14 at this stage, that were outright rejected

15 and never moved forward. All three

16 happened.

17 Q. You said you brought him executed

18 deals; deals executed by Russell Simmons

19 that he rejected?

20 A. No, I didn't say that I brought him

21 executed deals.

22 MR. OFFENHARTZ: Let's hear

23 the answer.

24 (Whereupon the record was

25 read back by the reporter.)

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1 B. Ullmann

2 MR. HOFFMAN: It's only

3 where you put the comma. He's

4 given the testimony, you had

5 changed it and now he's going to go

6 and explain it.

7 MR. OFFENHARTZ: Mr. Hoff

8 man, please don't speak for your

9 witness.

10 MR. HOFFMAN: I'm not

11 speaking for my witness, but you

12 are and you're not supposed to be

13 either.

14 MR. OFFENHARTZ: Please,

15 it's very unprofessional.

16 MR. HOFFMAN: Adam -- Adam,

17 don't pull that stuff with me

18 again.

19 MR. OFFENHARTZ: Mr. Hoff

20 man, lower your voice and if you

21 point your finger at me one more

22 time, I'm going to call the Court

23 and say you're behaving like a

24 child.

25 MR. HOFFMAN: Don't you dare

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1 B. Ullmann

2 call me unprofessional the way

3 you've acted in this case. Don't

4 you dare.

5 MR. OFFENHARTZ: Don't point

6 your finger at me. Don't point

7 your finger at me; it's very

8 unprofessional.

9 MR. HOFFMAN: Act

10 professional.

11 MR. OFFENHARTZ: Mr. Hoff

12 man, it's very unprofessional to

13 point your finger at your

14 adversary.

15 MR. HOFFMAN: Ask your

16 questions. I'll play your game.

17 Q. Do you know the address of Rush

18 Communications?

19 A. I do.

20 Q. What is the address of Rush

21 Communications?

22 A. It's 512 Seventh Avenue.

23 Q. Do you know who represented

24 Mr. Simmons in his negotiations departing

25 from Kellwood or Phat Fashions; do you

170

1 B. Ullmann
 2 know which law firm?
 3 A. Offhand, I don't.
 4 Q. You mentioned that he violated
 5 Kellwood guidelines by using abusive
 6 language?
 7 MR. HOFFMAN: Objection.
 8 Direct the witness not to answer.
 9 MR. OFFENHARTZ: You're
 10 directing the witness not to
 11 answer?
 12 MR. HOFFMAN: Yes.
 13 MR. OFFENHARTZ: On what
 14 grounds?
 15 MR. HOFFMAN: On grounds
 16 that it's confidential. It has
 17 nothing to do with this case.
 18 MR. OFFENHARTZ: You're
 19 instructing a witness not to answer
 20 a question on grounds other than
 21 privilege?
 22 MR. HOFFMAN: In this
 23 particular instance --
 24 MR. OFFENHARTZ: Thank you.
 25 Q. Mr. Ullmann, are you going to

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1 B. Ullmann
 2 client; I'm his lawyer.
 3 Q. Are you going to listen to your
 4 lawyer's instructions?
 5 A. I assume I should.
 6 MR. HOFFMAN: Do you want to
 7 answer the question without my
 8 instruction?
 9 THE WITNESS: You're
 10 Counsel; you're here to direct me.
 11 MR. HOFFMAN: You have
 12 already received answers to
 13 questions about it and we said we
 14 will discuss it later on.
 15 MR. OFFENHARTZ: No --
 16 MR. HOFFMAN: You're
 17 interrupting me again.
 18 Q. Mr. Ullmann, what was the language
 19 that Mr. Simmons used that was considered
 20 abusive?
 21 MR. HOFFMAN: I direct the
 22 witness not to answer. Objection.
 23 Now you're harassing the witness.
 24 Q. Mr. Ullmann, do you understand that
 25 you may well have to come back after these

171

1 B. Ullmann
 2 answer the question?
 3 A. I'm at a loss.
 4 Q. You answered the same question
 5 earlier today.
 6 MR. HOFFMAN: Exactly. So
 7 you've got the answer.
 8 MR. OFFENHARTZ: Put your
 9 hand down.
 10 MR. HOFFMAN: Stop it. I'll
 11 point my fingers where I want to
 12 point. It's not pointing at you;
 13 it's a figure of speech. People
 14 talk with their hands.
 15 MR. OFFENHARTZ: People also
 16 generally don't point fingers at
 17 other people.
 18 Q. Mr. Ullmann, what exact behavior
 19 did Mr. Simmons engage in that constituted
 20 a breach of Kellwood's guidelines?
 21 MR. HOFFMAN: I direct the
 22 witness not to answer.
 23 Q. Are you going to listen to your
 24 client's instructions?
 25 MR. HOFFMAN: I'm not his

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1 B. Ullmann
 2 two days are up to answer questions that
 3 you've been instructed not to answer?
 4 MR. HOFFMAN: Only if you're
 5 right, Adam.
 6 MR. OFFENHARTZ: I said
 7 "may". May have to come back.
 8 Q. Do you understand that?
 9 A. I do now.
 10 Q. Mr. Ullmann, on May 23, 2006, Bob
 11 Skinner tells you to hold off on Canada;
 12 that's correct, right?
 13 A. Correct.
 14 Q. Did Bob Skinner later tell you to
 15 proceed with Tornado?
 16 A. Not to the best of my recollection.
 17 Q. On May 23, 2006, from your
 18 perspective, Tornado, the Tornado
 19 negotiations were over; is that correct?
 20 MR. HOFFMAN: Objection to
 21 the form.
 22 A. No. Hold off is not the same as
 23 rejected.
 24 Q. Please tell me: What did you mean
 25 by "hold off"?

<p style="text-align: right;">174</p> <p>1 B. Ullmann</p> <p>2 A. It seems to me that hold off means</p> <p>3 let's not move this forward now. It's</p> <p>4 holds the possibility of it possibly being</p> <p>5 moved forward later.</p> <p>6 Q. Even on May 23, 2006, you still</p> <p>7 wanted the possibility of having an</p> <p>8 amendment with Tornado; is that correct?</p> <p>9 MR. HOFFMAN: Objection to</p> <p>10 the form.</p> <p>11 A. No, that's not correct. I had no</p> <p>12 particular desires; I wasn't looking for a</p> <p>13 particular result. The whole dialogue</p> <p>14 that led to the draft amendment was</p> <p>15 prompted by Issie Wiseman contacting me.</p> <p>16 I went through the motions of advancing</p> <p>17 that dialogue. When I was instructed to</p> <p>18 hold off, I held off.</p> <p>19 Q. If I've gotten this wrong, tell me,</p> <p>20 but your testimony is -- well, let me ask</p> <p>21 you the question again.</p> <p>22 By holding off, that did not mean</p> <p>23 it was no longer a possibility; is that</p> <p>24 correct?</p> <p>25 MR. HOFFMAN: Objection to</p>	<p style="text-align: right;">176</p> <p>1 B. Ullmann</p> <p>2 prudent and proper to proceed with</p> <p>3 Mr. Bitton.</p> <p>4 Q. Mr. Ullmann, why did you wait until</p> <p>5 February of 2007 to inform Issie Wiseman</p> <p>6 that there would be no amendment from your</p> <p>7 perspective?</p> <p>8 MR. HOFFMAN: Objection to</p> <p>9 the form.</p> <p>10 A. I don't recall exactly when I did</p> <p>11 advise him the first time, even though I</p> <p>12 believe it was towards the end of January</p> <p>13 or beginning of February '07. And from my</p> <p>14 vantage point, I wasn't necessarily so</p> <p>15 much away as it was -- it was not a</p> <p>16 priority for me to get back to him. As</p> <p>17 you see, this was a status report.</p> <p>18 I think we counted, on that</p> <p>19 particular report, that there were eleven</p> <p>20 entries. This was just one conversation</p> <p>21 of very many conversations.</p> <p>22 Q. Mr. Ullmann, looking at Exhibit 9</p> <p>23 for a moment, on May 23rd, you write that</p> <p>24 Bob Skinner has asked you to hold off on</p> <p>25 Canada?</p>
<p style="text-align: right;">175</p> <p>1 B. Ullmann</p> <p>2 the form. Asked and answered.</p> <p>3 A. My view is I couldn't proceed with</p> <p>4 it then. Maybe we would get back to it</p> <p>5 later and maybe we wouldn't.</p> <p>6 Q. What would be the deciding factor</p> <p>7 whether or not you would get back to it</p> <p>8 later?</p> <p>9 A. It would be Bob Skinner.</p> <p>10 Q. Did Bob Skinner ever come back to</p> <p>11 you and say, or explain to you why he</p> <p>12 wanted to hold off with Tornado?</p> <p>13 A. I have no recollection that he ever</p> <p>14 explained it, but he did make an</p> <p>15 introduction, as we have discussed, to</p> <p>16 Gaby Bitton; the incidence could be</p> <p>17 related, but I don't know that they are.</p> <p>18 Q. Did you discuss your dealings with</p> <p>19 Mr. Bitton or with Mr. Skinner?</p> <p>20 A. Yes.</p> <p>21 Q. In any of the discussions that you</p> <p>22 had with Mr. Skinner regarding Mr. Bitton,</p> <p>23 was Tornado discussed?</p> <p>24 A. Only in the context of having</p> <p>25 received guidance from Counsel that it was</p>	<p style="text-align: right;">177</p> <p>1 B. Ullmann</p> <p>2 A. Correct.</p> <p>3 Q. Did you inform Issie Wiseman on May</p> <p>4 23rd that things were on hold; yes or no</p> <p>5 or you don't recall?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you inform Issie Wiseman that</p> <p>8 things were on hold in June 2006?</p> <p>9 A. I don't recall.</p> <p>10 Q. July of 2006?</p> <p>11 A. I don't recall.</p> <p>12 Q. August of 2006?</p> <p>13 A. I don't recall.</p> <p>14 Q. September of 2006?</p> <p>15 A. I don't recall.</p> <p>16 Q. October of 2006?</p> <p>17 A. I don't recall.</p> <p>18 Q. November of 2006?</p> <p>19 A. I don't recall.</p> <p>20 Q. December of 2006?</p> <p>21 A. I don't recall.</p> <p>22 MR. HOFFMAN: Careful now.</p> <p>23 Q. In January of 2007 or in February</p> <p>24 of 2007, what did you inform Mr. Wiseman</p> <p>25 of?</p>

<p style="text-align: right;">178</p> <p>1 B. Ullmann</p> <p>2 A. While I cannot recall the exact</p> <p>3 language, I do recall that we had a</p> <p>4 conversation that I did not expect us to</p> <p>5 be able to conclude the transaction; there</p> <p>6 will be no amendment.</p> <p>7 Q. That conversation took place after</p> <p>8 you had reached terms and principal with</p> <p>9 Buffalo Jeans; isn't that the case?</p> <p>10 MR. HOFFMAN: Objection to</p> <p>11 the form.</p> <p>12 A. Again, I can't recall that they are</p> <p>13 related. They could be.</p> <p>14 Q. Let me ask you this: If Buffalo</p> <p>15 Jeans, on January 1st of 2007, had said to</p> <p>16 you, Mr. Ullmann, sorry, we cannot do</p> <p>17 business with you, it's never happening;</p> <p>18 what would you have done?</p> <p>19 A. I would likely have come back to</p> <p>20 Bob Skinner to revisit the executive</p> <p>21 summary for Tornado and re-present it and</p> <p>22 see if we were in a position to take it</p> <p>23 off hold or if he desired to move in some</p> <p>24 other direction, either directing me to</p> <p>25 another potential licensee or whatever</p>	<p style="text-align: right;">180</p> <p>1 B. Ullmann</p> <p>2 it's particularly linked to anything.</p> <p>3 Q. Your decision to inform Issie</p> <p>4 Wiseman in late January, February of 2007</p> <p>5 that you are not proceeding with the</p> <p>6 amendment had no linkage whatsoever with</p> <p>7 your negotiations with Bitton; is that the</p> <p>8 case?</p> <p>9 MR. HOFFMAN: Objection to</p> <p>10 the form.</p> <p>11 A. No, I'm not saying that either.</p> <p>12 There's -- obviously, we were in</p> <p>13 conversations with Bitton. The terms were</p> <p>14 still being negotiated. And this, I know</p> <p>15 for a fact, what triggered my conversation</p> <p>16 with Issie was not the status of the</p> <p>17 Bitton negotiation regardless of there</p> <p>18 being a link; yes, I would say they're</p> <p>19 related.</p> <p>20 But what triggered it is that there</p> <p>21 was a show coming up, the MAGIC show and</p> <p>22 it didn't seem right with the information</p> <p>23 available to me at the time to go out</p> <p>24 there and see him in person, knowing at</p> <p>25 this point and feeling rather strongly,</p>
<p style="text-align: right;">179</p> <p>1 B. Ullmann</p> <p>2 else he may choose to do.</p> <p>3 Q. Basically, you needed to keep</p> <p>4 Tornado on hold so that they would</p> <p>5 continue to be an option until you</p> <p>6 finalized another deal; isn't that the</p> <p>7 case?</p> <p>8 MR. HOFFMAN: Objection to</p> <p>9 the form.</p> <p>10 A. No, I disagree. I don't think</p> <p>11 that's accurate at all. Tornado has an</p> <p>12 agreement that still is in effect today.</p> <p>13 It runs all the way to the end of this</p> <p>14 year. The notice period in that</p> <p>15 agreement, each and every time when it was</p> <p>16 reviewed, I believe, and it's our standard</p> <p>17 language, any licensee that is renewing --</p> <p>18 and it's different than amending -- has to</p> <p>19 give notice not sooner than nine months</p> <p>20 before expiration and not later than six</p> <p>21 months prior to expiration.</p> <p>22 So if I'm having a conversation</p> <p>23 with Issie Wiseman in January or February,</p> <p>24 I'm well outside of that window providing</p> <p>25 ample time either way and I don't think</p>	<p style="text-align: right;">181</p> <p>1 B. Ullmann</p> <p>2 that we wouldn't be proceeding. I felt it</p> <p>3 was proper to tell him and tell him in</p> <p>4 advance of him going out there.</p> <p>5 Q. If there had been no MAGIC show,</p> <p>6 you would have felt no reason to tell him;</p> <p>7 is that your testimony?</p> <p>8 MR. HOFFMAN: Objection to</p> <p>9 the form.</p> <p>10 A. I would say I had no legal nor</p> <p>11 morale obligation to say anything until we</p> <p>12 were in the window. However, as a</p> <p>13 courtesy and because of our relationship,</p> <p>14 I shared it with him at the time when I</p> <p>15 felt it was proper and prudent in the</p> <p>16 context of our internal dealings.</p> <p>17 Q. Some eight or nine months after you</p> <p>18 made the decision to put it on hold; is</p> <p>19 that correct?</p> <p>20 MR. HOFFMAN: Objection to</p> <p>21 the form.</p> <p>22 Q. Did you decide to inform</p> <p>23 Mr. Wiseman you were not proceeding nine</p> <p>24 months after Mr. Skinner advised you to</p> <p>25 put it on hold; it's a yes or no answer --</p>

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1 B. Ullmann
2 MR. HOFFMAN: It's not yes
3 or no.
4 MR. OFFENHARTZ: You know
5 something --
6 Q. Mr. Ullmann, will you please look
7 at Exhibit No. 9?
8 A. Yes.
9 Q. What is the date on Exhibit No. 9;
10 we can do it this way.
11 MR. HOFFMAN: I was
12 objecting to -- he was answering a
13 question and you stopped him from
14 answering; that's what I was
15 objecting to, not the question.
16 You didn't let him answer.
17 Q. What is the date on Exhibit No. 9?
18 A. 5/23/2006.
19 Q. That's when you first learned that
20 Bob Skinner wanted you to put Tornado on
21 hold, correct?
22 MR. HOFFMAN: Objection to
23 the form.
24 A. And as already testified, it was
25 true, it was on hold; which is different

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1 B. Ullmann
2 than being rejected.
3 Q. You never told Mr. Wiseman that the
4 deal was on hold, did you?
5 MR. HOFFMAN: Objection to
6 the form. Asked and answered.
7 A. I don't recall all the way up to
8 January or February, when I do recall.
9 Q. How long had you been in business
10 with Mr. Wiseman?
11 A. Personally, since February of 2004.
12 Q. When exactly did the decision --
13 who made the decision to go from holding
14 off on Tornado to being done with Tornado?
15 A. Ultimately, I made the
16 recommendation.
17 Q. To whom did you make the
18 recommendation?
19 A. Bob Skinner.
20 Q. When did you make the
21 recommendation that Tornado go from being
22 on hold to being over?
23 A. No recollection.
24 Q. Was it in June of 2006?
25 A. I seriously doubt it.

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1 B. Ullmann
2 Q. Why do you seriously doubt it?
3 A. Because we were still just on hold.
4 Q. When did you go from being on hold
5 to recommending to Mr. Skinner that you
6 were done with Tornado?
7 A. I cannot recall.
8 Q. Was it in July of 2006?
9 A. I think it was more in January,
10 February of 2007; that would be my guess.
11 It's a guess; it's not a recollection.
12 Q. What were the factors that led you
13 to guess that that's when you decided to
14 be done with Tornado?
15 A. Rephrase the question, please.
16 MR. OFFENHARTZ: Can you
17 read the question back, please.
18 (Whereupon the record was
19 read back by the reporter.)
20 A. You want me -- the factors that led
21 me to guess or do you want me to guess
22 what the factors were?
23 Q. Mr. Ullmann, you testified that you
24 guess you made a recommendation to
25 Mr. Skinner to terminate Tornado in

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1 B. Ullmann
2 January or February; what makes you guess
3 it was January or February?
4 A. Well, I am thinking so because
5 that's when we know that I notified Issie.
6 Q. What were the reasons that prompted
7 you to go from on hold to terminate;
8 something had to prompt the change?
9 MR. HOFFMAN: Objection to
10 the form.
11 Q. What prompted the change?
12 MR. HOFFMAN: Objection to
13 the form.
14 A. I cannot recall the specific
15 reasons. I will say we had, by then,
16 received a lot of information about how
17 our brand was being managed in the
18 territory and it was unfavorable
19 information. The proposed minimums in the
20 agreement, while higher than what had
21 previously been done, are not impressive
22 at all by any business standard. All our
23 standard agreements go off at a royalty of
24 8 percent; this agreement was
25 grandfathering 7 percent.

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1 B. Ullmann
 2 By then, there had been a
 3 falling-out with our Baby Phat licensee
 4 and there was a major feud going on
 5 between Baby Phat, our largest licensee
 6 bar none -- it's our largest licensee by
 7 far and there is, at this point, a vicious
 8 feud between Baby Phat and Issie and some
 9 separate entity that he's involved with.
 10 So there were a number of reasons that
 11 were unfavorable and it changed the
 12 climate.
 13 Q. How did your discussions with
 14 Bitton fit into that climate?
 15 MR. HOFFMAN: Objection to
 16 the form.
 17 A. Restate the question, please.
 18 Q. What don't you understand about the
 19 question?
 20 A. I'm not sure if I understand it.
 21 MR. HOFFMAN: He asked you
 22 to restate it.
 23 MR. OFFENHARTZ: I'm
 24 asking -- it will help me restate
 25 it if he can explain what he

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1 B. Ullmann
 2 guidance.
 3 Q. Mr. Ullmann, you recommended, or
 4 you've testified that you recommended to
 5 Mr. Skinner to terminate Tornado; is that
 6 correct?
 7 A. Yes.
 8 MR. HOFFMAN: Objection to
 9 the form. I don't believe that's
 10 the testimony.
 11 A. Oh, then, I didn't.
 12 Q. You testified that you did, but if
 13 your lawyer tells you that you didn't, if
 14 you want to change your testimony based on
 15 what Mr. Hoffman said, that's fine.
 16 MR. HOFFMAN: Can we have it
 17 read back. Please let me finish
 18 and not talk over me. You're
 19 making these statements; let's have
 20 the reporter go back.
 21 I do not believe that he
 22 said he recommended they terminate
 23 Tornado. They were talking about
 24 discussions. Do a search for the
 25 word.

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1 B. Ullmann
 2 doesn't understand about it.
 3 A. I said restate. I didn't
 4 understand it, but maybe re-read it and
 5 I'll understand it.
 6 MR. OFFENHARTZ: Please read
 7 back the question.
 8 (Whereupon the record was
 9 read back by the reporter.)
 10 A. Fit into the climate?
 11 Q. Climate was a phrase you used.
 12 A. I know, but I still don't
 13 understand it.
 14 Q. Mr. Ullmann, please tell me the
 15 role that your negotiations with Bitton
 16 played in deciding to terminate Tornado?
 17 A. I think that was one out of a
 18 number of factors.
 19 Q. Am I to understand that you would
 20 have terminated Tornado even without
 21 finalizing your deals with Bitton?
 22 MR. HOFFMAN: Objection to
 23 the form. You can answer.
 24 A. It wasn't my ultimate decision. At
 25 the time, I was relying upon Bob Skinner's

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1 B. Ullmann
 2 (Whereupon the record was
 3 read back by the reporter.)
 4 A. Can I clarify something, please.
 5 Under no circumstance would I have
 6 recommended that Tornado was terminated.
 7 If I said that, I want it stricken or
 8 rephrased because the agreement is
 9 expiring and there are no new renewals.
 10 Q. Just for clarity sake, and that is
 11 a fair point, did there come a time when
 12 you recommended to Mr. Skinner that there
 13 be no amendment with Tornado?
 14 A. I believe that is true.
 15 Q. You may recall, just a few minutes
 16 ago we went around and around on when you
 17 thought that recommendation had been made
 18 to Mr. Skinner?
 19 A. Yes.
 20 Q. I think just maybe two minutes ago,
 21 I asked you whether you indeed had
 22 recommended to Mr. Skinner that Phat
 23 Fashions not proceed with Tornado and I
 24 think that's what drew your lawyer's ire?
 25 MR. HOFFMAN: No, you asked

<p style="text-align: right;">194</p> <p>1 B. Ullmann</p> <p>2 Q. Did you do that?</p> <p>3 A. I don't know. I don't recall.</p> <p>4 MR. OFFENHARTZ: Can you</p> <p>5 read back the last question and</p> <p>6 answer.</p> <p>7 (Whereupon the record was</p> <p>8 read back by the reporter.)</p> <p>9 Q. This is marked as Exhibit 10. Have</p> <p>10 you seen this document before, Mr.</p> <p>11 Ullmann?</p> <p>12 A. I have.</p> <p>13 Q. How recently have you seen this</p> <p>14 document?</p> <p>15 A. I would say I saw it on Tuesday.</p> <p>16 Q. Who showed this document to you on</p> <p>17 Tuesday?</p> <p>18 A. My Counsel.</p> <p>19 Q. By your Counselor, you're referring</p> <p>20 to whom?</p> <p>21 A. Mr. Phil Hoffman.</p> <p>22 Q. How long did you spend talking with</p> <p>23 Mr. Hoffman about this document?</p> <p>24 MR. HOFFMAN: I'm going to</p> <p>25 object. Attorney work product.</p>	<p style="text-align: right;">196</p> <p>1 B. Ullmann</p> <p>2 A. I don't recall.</p> <p>3 Q. What was the state of negotiations</p> <p>4 with Mr. Bitton in January of 2007?</p> <p>5 A. Again, I don't recall. I can infer</p> <p>6 based upon the e-mail.</p> <p>7 Q. What do you infer based upon this</p> <p>8 e-mail?</p> <p>9 A. I infer that there were dialogues</p> <p>10 that hadn't been concluded.</p> <p>11 Q. What do you mean by dialogues had</p> <p>12 not been concluded?</p> <p>13 A. I mean that there were discussions</p> <p>14 about Gaby Bitton taking over the</p> <p>15 stewardship of our brand in Canada. There</p> <p>16 was also a dialogue about the role at our</p> <p>17 retail stores in the United States and it</p> <p>18 seems to me, while we must have had good</p> <p>19 negotiations, good conversations, they</p> <p>20 were, at this stage, inconclusive.</p> <p>21 Q. When did they become conclusive</p> <p>22 following January 24, 2007?</p> <p>23 A. I don't recall.</p> <p>24 Q. Ballpark? A month ago, February of</p> <p>25 2007, September of 2007?</p>
<p style="text-align: right;">195</p> <p>1 B. Ullmann</p> <p>2 It's privilege. That's an</p> <p>3 objection. You don't have to</p> <p>4 answer that. It's privileged.</p> <p>5 MR. OFFENHARTZ: I'm not</p> <p>6 sure I agree with you, but I'll</p> <p>7 think about it.</p> <p>8 MR. HOFFMAN: You know what</p> <p>9 Adam, honestly, it's not really a</p> <p>10 big deal to me. If you want to ask</p> <p>11 him and he wants to answer and if</p> <p>12 he remembers, it's fine.</p> <p>13 Go ahead, why don't you</p> <p>14 answer.</p> <p>15 MR. OFFENHARTZ: If it's not</p> <p>16 a big deal -- that's fine. I can</p> <p>17 agree with you, but you objected.</p> <p>18 I don't agree with your objection,</p> <p>19 but I agree with why you objected.</p> <p>20 A. It was brief. To the best of my</p> <p>21 recollection, a minute, something like</p> <p>22 that; not more.</p> <p>23 Q. Do you recall writing this e-mail</p> <p>24 to Mr. Bitton on or about January 24,</p> <p>25 2007?</p>	<p style="text-align: right;">197</p> <p>1 B. Ullmann</p> <p>2 A. I don't know. In terms of</p> <p>3 conclusive, I can say the retail deal</p> <p>4 remained inconclusive well into August,</p> <p>5 September of 2007. And actually, the</p> <p>6 reality is -- I do recall now -- the</p> <p>7 Canadian deal, as well, remained opened</p> <p>8 for a very long time; at least until June,</p> <p>9 maybe even July of this year.</p> <p>10 Q. What do you mean by remained open?</p> <p>11 A. I mean there were unnegotiated</p> <p>12 points that were open points.</p> <p>13 Q. Would you say you were 95 percent</p> <p>14 of the way there by February 1, 2007?</p> <p>15 A. I don't think there is any such</p> <p>16 thing as being 95 percent anywhere in the</p> <p>17 contract. It's either completely done and</p> <p>18 it's only done when it's signed or it's</p> <p>19 not. I can't speculate to you. In my</p> <p>20 mind, it could have been there and they</p> <p>21 could have been somewhere else.</p> <p>22 Q. In your mind, where were you on</p> <p>23 February 1, 2007?</p> <p>24 A. I do not recall that accurately.</p> <p>25 It seems to me that I'm trying to push, at</p>

<p style="text-align: right;">218</p> <p>1 B. Ullmann</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Who were you waiting for further</p> <p>5 info from on the retail deal?</p> <p>6 A. From Gaby.</p> <p>7 Q. When did you have those discussions</p> <p>8 with Mr. Bitton?</p> <p>9 A. I don't recall. It could be, from</p> <p>10 all I know, going back to Exhibit 10.</p> <p>11 Where I'm saying we're still looking to</p> <p>12 fully negotiate the term sheets and that's</p> <p>13 on January 24th. I don't know from</p> <p>14 October to January, it's possible.</p> <p>15 Q. When did Mr. Bitton finally provide</p> <p>16 you whatever information you were waiting</p> <p>17 on from him?</p> <p>18 A. I don't recall. It appears clear</p> <p>19 that on January 24, 2007, I still did not</p> <p>20 have all the information that I was</p> <p>21 looking for.</p> <p>22 MR. OFFENHARTZ: Can you</p> <p>23 mark this as 12, please.</p> <p>24 (Whereupon Document that</p> <p>25 bears Bates numbers PF0203 through</p>	<p style="text-align: right;">220</p> <p>1 B. Ullmann</p> <p>2 Q. Did you write them down by hand and</p> <p>3 have your assistant fax them?</p> <p>4 A. Definitely not.</p> <p>5 Q. Did you send him comments?</p> <p>6 A. Specifically on this deal or in</p> <p>7 general?</p> <p>8 Q. On October 31th, you indicated to</p> <p>9 Mr. Nathanson that you would review the</p> <p>10 draft agreement he sent you and advise</p> <p>11 accordingly.</p> <p>12 Do you recall how you advised</p> <p>13 Mr. Nathanson accordingly?</p> <p>14 A. I don't.</p> <p>15 Q. You don't recall if you marked the</p> <p>16 document up and e-mailed it back to him?</p> <p>17 A. I don't.</p> <p>18 Q. You don't recall if you picked up</p> <p>19 the phone and discussed it with him?</p> <p>20 A. I don't.</p> <p>21 Q. Do you recall what he meant by --</p> <p>22 did you ask him to forward it on to anyone</p> <p>23 else?</p> <p>24 A. Not to the best of my recollection.</p> <p>25 MR. OFFENHARTZ: If you can</p>
<p style="text-align: right;">219</p> <p>1 B. Ullmann</p> <p>2 PF0207 was marked Defendant's</p> <p>3 Exhibit 12 for identification as of</p> <p>4 this date.)</p> <p>5 Q. Number 12. Please take a moment to</p> <p>6 review it. This is a document that bears</p> <p>7 Bates numbers PF0203 through PF0207.</p> <p>8 On the first page of this exhibit,</p> <p>9 in the middle, Mr. Nathanson is sending to</p> <p>10 you a draft agreement for the new Canadian</p> <p>11 licensee. He's asking you to please</p> <p>12 review and let him know if you have any</p> <p>13 comments.</p> <p>14 Your response, which you sent later</p> <p>15 that day is, you will review tomorrow and</p> <p>16 advise accordingly. Do you recall what</p> <p>17 comments you had?</p> <p>18 A. I don't.</p> <p>19 Q. Do you recall how you conveyed your</p> <p>20 comments to Mr. Nathanson?</p> <p>21 A. I don't.</p> <p>22 Q. Did you send them by e-mail?</p> <p>23 A. I don't know.</p> <p>24 Q. Did you send them by telephone?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">221</p> <p>1 B. Ullmann</p> <p>2 mark that as Exhibit 13.</p> <p>3 (Whereupon Document</p> <p>4 Bates-stamped PF0208 through PF0212</p> <p>5 was marked Defendant's Exhibit 13</p> <p>6 for identification as of this</p> <p>7 date.)</p> <p>8 MR. OFFENHARTZ: This</p> <p>9 document is Bates-stamped PF0208</p> <p>10 through PF0212.</p> <p>11 Q. Have you had a chance to review</p> <p>12 this?</p> <p>13 A. I have.</p> <p>14 Q. Mr. Ullmann, do you recall on</p> <p>15 Thursday, November 2, 2006, sending what</p> <p>16 you describe as a first draft of our</p> <p>17 agreement for Canada to Marc Kakon at</p> <p>18 Algo, Gaby at Buffalo Jeans and perhaps</p> <p>19 Don Elituv at rogers.blackberry.net?</p> <p>20 A. No, I don't recall doing it, but I</p> <p>21 can see from the e-mail that I obviously</p> <p>22 did.</p> <p>23 Q. It appears that you sent the first</p> <p>24 draft of your Canada agreement to Algo on</p> <p>25 November 2nd, correct?</p>

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1 B. Ullmann
2 A. Yes.
3 Q. Does this refresh your recollection
4 whether you provided any comments to Eli
5 Nathanson, looking at this document?
6 MR. HOFFMAN: On the draft
7 that he had sent?
8 MR. OFFENHARTZ: Yes.
9 A. I don't recall, but I'm going to
10 have to assume that I did.
11 Q. Why do you assume you did?
12 A. Based upon my comments from Exhibit
13 12 that says I will review tomorrow and
14 advise accordingly.
15 At the very least, I would have
16 advised -- it may be no comments, but I
17 would advise it's okay, please proceed;
18 something like that.
19 Q. You don't recall what, if any, your
20 comments were?
21 A. No, no.
22 Q. Mr. Ullmann, did you advise Issie
23 Wiseman that you had provided a draft of a
24 license agreement for a competitor in
25 Canada on November 2, 2006?

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1 B. Ullmann
2 A. Why would I?
3 Q. I'm simply asking if you did. Your
4 lawyer and I can argue and probably will
5 for quite some time over whether or not
6 you should have.
7 I'm simply asking: Did you advise
8 Mr. Wiseman, on November 2nd, that you had
9 provided a draft agreement for a license
10 agreement to Gaby Bitton and his
11 colleagues?
12 A. I don't recall, but it's quite
13 certain that I wouldn't. I would say at
14 this point, it had nothing to do with him.
15 Q. It would have nothing to do with
16 Issie Wiseman that you were not going to
17 amend the agreement; is that your
18 testimony? --
19 MR. HOFFMAN: Objection to
20 the form.
21 A. That is not my testimony. My
22 testimony is that at this point, we were
23 engaged in exploratory dialogue with
24 potential other licensees and at that
25 stage, there was no way of knowing where

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1 B. Ullmann
2 we would end up in the conversation.
3 And as I had indicated and
4 testified to you earlier, there were a
5 number of other things going on in our
6 relationship with Mr. Wiseman.
7 Q. At any time from November on
8 through late January or early February,
9 when you informed Mr. Wiseman that you
10 would not be proceeding with the executed
11 amendment, did you ever inform him that
12 you'd entered into and exchanged proposals
13 with any other possible licensee?
14 MR. HOFFMAN: Objection to
15 the form. An executed amendment?
16 A. Can you please re-ask the question.
17 MR. OFFENHARTZ: Can you
18 repeat the question, please.
19 (Whereupon the record was
20 read back by the reporter.)
21 A. I don't recall, but don't believe
22 that I had.
23 Q. Is there any doubt in your mind
24 that you didn't tell Mr. Wiseman anything
25 of that nature?

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1 B. Ullmann
2 MR. HOFFMAN: Objection to
3 the form.
4 A. I testified that I don't recall.
5 So the first time I recall having a
6 dialogue with Mr. Wiseman about this is
7 late January or early February. It does
8 not necessarily mean that it is, indeed,
9 the first time it takes place. It's the
10 first time I can recall that it took
11 place.
12 Q. Mr. Ullmann, would you turn to
13 Exhibit 10, please. You have Exhibit 10
14 in front of you?
15 A. I do.
16 Q. Do you recall what Mr. Bitton's
17 response to this e-mail was, or
18 Mr. Kakon's response?
19 A. I don't.
20 Q. Do you recall when they responded,
21 if at all, to this e-mail?
22 A. I don't.
23 Q. Did they get back to you right
24 away; did you have to send them another
25 e-mail a month later? I'm just trying to

<p style="text-align: right;">226</p> <p>1 B. Ullmann</p> <p>2 help you refresh your recollection.</p> <p>3 A. But I don't recall.</p> <p>4 Q. Your recollection is that you</p> <p>5 didn't finalize a deal for some time after</p> <p>6 January 24th; is that correct?</p> <p>7 A. My recollection is that neither the</p> <p>8 Canadian deal nor the U.S. retail rollout</p> <p>9 deal were finalized and executed until</p> <p>10 after, I want to say June of this year.</p> <p>11 The U.S. retail deal even later, much</p> <p>12 later.</p> <p>13 MR. OFFENHARTZ: Would you</p> <p>14 mark this as Exhibit 14, please.</p> <p>15 (Whereupon One-page</p> <p>16 document, bearing Bates number</p> <p>17 PF0222 was marked Plaintiff's</p> <p>18 Exhibit 14 for identification as of</p> <p>19 this date.)</p> <p>20 Q. I'm handing you what has been</p> <p>21 marked as Exhibit 14.</p> <p>22 A. Yes.</p> <p>23 Q. Exhibit 14 is a one-page document,</p> <p>24 bearing Bates number PF0222.</p> <p>25 Can you take a moment to review it,</p>	<p style="text-align: right;">228</p> <p>1 B. Ullmann</p> <p>2 when he would like to put closure on this?</p> <p>3 A. Well, he's talking about his</p> <p>4 intention of closing by the end of the</p> <p>5 week.</p> <p>6 Q. In fact, what he writes -- would</p> <p>7 you read the last sentence that he writes,</p> <p>8 please.</p> <p>9 A. "We would also like to put closure</p> <p>10 to this by the end of the week."</p> <p>11 Q. Do you recall if Marc Kakon called</p> <p>12 you Thursday or Friday, January 25 or 26,</p> <p>13 2007?</p> <p>14 A. I don't, but it would not be</p> <p>15 surprising if he did not call back that</p> <p>16 week.</p> <p>17 Q. You don't recall either way?</p> <p>18 A. I don't recall either way.</p> <p>19 Q. When do you recall next speaking to</p> <p>20 either Mr. Bitton or Mr. Kakon after</p> <p>21 January 24, 2007?</p> <p>22 A. The next time I really recall</p> <p>23 speaking to them is at the MAGIC show in</p> <p>24 Las Vegas in February. That's not to say</p> <p>25 we didn't speak prior, but I recall seeing</p>
<p style="text-align: right;">227</p> <p>1 B. Ullmann</p> <p>2 please?</p> <p>3 A. Yes.</p> <p>4 Q. Does this refresh your recollection</p> <p>5 of when either Mr. Bitton or Mr. Kakon</p> <p>6 responded to your e-mail of Wednesday,</p> <p>7 January 24th?</p> <p>8 A. To the extent that this one</p> <p>9 and-a-half lines constitute a response, we</p> <p>10 have that in front of us here.</p> <p>11 Q. Is this not a response?</p> <p>12 A. Yes, it's a response.</p> <p>13 Q. Does this refresh your recollection</p> <p>14 of when they responded?</p> <p>15 A. They responded promptly the same</p> <p>16 day.</p> <p>17 Q. What did they say or who actually</p> <p>18 responded?</p> <p>19 A. Gaby Bitton.</p> <p>20 Q. What did he write?</p> <p>21 A. He's suggesting that Marc will be</p> <p>22 getting back to me via telephone. So he</p> <p>23 speaks to an intent of Marc Kakon to call</p> <p>24 me.</p> <p>25 Q. What does Mr. Bitton write about</p>	<p style="text-align: right;">229</p> <p>1 B. Ullmann</p> <p>2 them there.</p> <p>3 Q. You have no recollection either way</p> <p>4 whether you spoke or didn't speak?</p> <p>5 A. I don't.</p> <p>6 Q. Did you come to understand what</p> <p>7 Mr. Bitton meant by, "We would also like</p> <p>8 to put closure to this by the end of the</p> <p>9 week"?</p> <p>10 A. I think he's simply speaking to an</p> <p>11 intent of having a meeting of the minds on</p> <p>12 business terms.</p> <p>13 Q. When did you have a meeting of the</p> <p>14 minds on business terms; not a</p> <p>15 fully-executed document, but the phrase</p> <p>16 you used, "a meeting of the minds of</p> <p>17 business terms"?</p> <p>18 MR. HOFFMAN: Objection to</p> <p>19 the form.</p> <p>20 A. Sometime significantly later in the</p> <p>21 spring.</p> <p>22 Q. Do you recall any other e-mails</p> <p>23 exchanged with Marc Kakon or Gaby Bitton</p> <p>24 and you or your colleagues?</p> <p>25 A. I don't recall, but I expect that</p>

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1 B. Ullmann
 2 Q. Rush Communications is on?
 3 A. 43.
 4 Q. Mr. Ullmann, do you recall a
 5 dispute that Issie Wiseman had with one of
 6 Phat Fashions' licensees in Europe?
 7 A. Yes.
 8 Q. What do you recall about that
 9 dispute?
 10 A. I recall that a footwear licensee
 11 of ours in Europe had sold off a smaller
 12 partial of old inventory to a distributor
 13 in eastern Europe and at least part of
 14 that partial made it into the Canadian
 15 market through its transshipment. It was
 16 sold from one market and transshipped into
 17 another market where it was not supposed
 18 to go.
 19 Q. When did this take place?
 20 A. Sometime in 2005. Fall of 2005.
 21 Q. Do you recall how this was brought
 22 to your attention?
 23 A. Yes, Issie told me about it.
 24 Q. Do you recall how it got resolved?
 25 A. Well, Issie was insisting that he

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1 B. Ullmann
 2 A. \$25,000.
 3 Q. When did you have this recent
 4 review of the documents?
 5 A. On Tuesday.
 6 Q. Prior to Tuesday, would you have
 7 had any recollection about these events?
 8 A. I would have recollected the
 9 events, but not the specific amount.
 10 MR. OFFENHARTZ: Please mark
 11 this as Defendant's Exhibit 15.
 12 (Whereupon E-mail regarding
 13 Unioncon was marked Defendant's
 14 Exhibit 15 for identification as of
 15 this date.)
 16 Q. I'm handing you what has been
 17 marked as Defendant's Exhibit 15. Take a
 18 moment to review this document, please.
 19 A. I'm ready.
 20 Q. Is this a document you reviewed on
 21 Tuesday?
 22 A. I believe so.
 23 Q. Did you review other documents on
 24 this issue on Tuesday?
 25 A. I don't think so. I don't even

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1 B. Ullmann
 2 had been wronged. I attempted to actually
 3 get some type of monetary compensation for
 4 him from the European licensee, but came
 5 to agree with the European licensee that
 6 they hadn't shipped their side of the
 7 territory.
 8 They delivered the goods and could
 9 provide evidence that they shipped the
 10 goods inside of their territory. The
 11 goods ended up in Canada through an
 12 illegal transshipment and our European
 13 licensee immediately terminated their
 14 relationship with said distributor. So no
 15 monetary damage was ever offered.
 16 Q. What monetary amount were you
 17 contemplating?
 18 A. You know, I seem to recall, and
 19 this I believe has to do with more recent
 20 review of documents, I don't think I would
 21 have had any independent recollection, to
 22 be honest.
 23 Q. What has your recent review of the
 24 documents indicated to you that the
 25 monetary value was?

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1 B. Ullmann
 2 know if I reviewed the bottom half of the
 3 page; I only recall the top.
 4 Q. How did you go about attempting to
 5 institute a modest financial penalty of
 6 \$25,000 on Unioncon?
 7 A. By having a dialogue with Unioncon,
 8 their principals.
 9 Q. Do you recall if that was by e-mail
 10 or by telephone?
 11 A. I don't recall, but believe that --
 12 I don't recall. I do recall speaking with
 13 them at least at one point, so for sure --
 14 if not fully -- partially by phone.
 15 Q. The recollection you have of the
 16 discussion with Unioncon, is that before
 17 or after August 11, 2005?
 18 MR. HOFFMAN: Objection to
 19 form.
 20 A. I don't recall.
 21 Q. Do you recall any discussions with
 22 Unioncon after August 11, 2005?
 23 A. No.
 24 Q. You don't recall any efforts that
 25 you may or may not have made with Unioncon

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1 B. Ullmann
2 to institute a modest financial penalty of
3 \$25,000, do you?
4 A. I don't. It says "stay tuned," so
5 it indicates that my intentions were to
6 follow up with Unioncon, but I don't
7 recall specifically when. You're asking
8 about dates. I don't recall dates.
9 Q. Do you recall that you did
10 follow-up with Unioncon?
11 A. I recall having at least one
12 conversation with Unioncon, where they
13 specifically explained the point that's
14 stated here. Namely that they sold a
15 legitimate account within their legitimate
16 territory and hence felt that no penalty
17 or financial compensation was due. But
18 whether or not there were subsequent
19 conversations to this, I don't know. I
20 don't recall.
21 Q. Indeed, one can infer that since
22 you're recalling a discussion where
23 Unioncon told you what you conveyed in
24 this e-mail, that the one conversation you
25 recall occurred prior to August 11th?

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1 B. Ullmann
2 MR. HOFFMAN: Objection to
3 form.
4 A. It's possible.
5 Q. It's likely?
6 A. It's possible.
7 MR. HOFFMAN: Objection to
8 the form.
9 Q. Is it likely?
10 A. I can't comment on whether it's
11 likely or not. I don't know.
12 Q. Mr. Ullmann, you write to
13 Mr. Wiseman, "Unioncon is resisting
14 arguing that it's unfair as they sold the
15 goods to a legitimate account who, again,
16 sold to a legitimate account"; is that
17 correct?
18 A. Yes.
19 Q. Would you have any way of knowing
20 that Unioncon is resisting and arguing
21 certain things without having had a
22 communication with Unioncon?
23 A. No.
24 Q. Is it fair to assume, as you sit
25 here today, that when you wrote this

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1 B. Ullmann
2 e-mail, you had already spoken to
3 Unioncon?
4 A. Yes.
5 Q. You've also testified today that
6 you only recall one conversation with
7 Unioncon, correct?
8 MR. HOFFMAN: Objection to
9 the form.
10 A. If I have testified that I only
11 recall one conversation, what I should be
12 specific about is: Yes, I only recall one
13 conversation, which would be this. It
14 does not mean that I'm only recalling or,
15 rather, that I was recalling that it was
16 only one call. This I don't know because
17 there have been five calls; I can only
18 remember these contents.
19 Q. The one call you recall took place
20 before August 11th?
21 A. In looking at the e-mail, I think
22 that is a reasonable conclusion.
23 Q. Do you recall any e-mails with
24 Unioncon following up on this e-mail?
25 A. I don't recall.

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1 B. Ullmann
2 Q. You write, "stay tuned"?
3 A. Yes.
4 Q. I'm simply trying to understand
5 what you did to attempt to institute a
6 modest financial penalty of \$25,000; do
7 you recall anything that you did to
8 attempt to institute a modest financial
9 penalty?
10 A. Above and beyond engaging in a
11 conversation that was rebuffed, no.
12 Q. What conversation are you referring
13 to?
14 A. The conversation with Unioncon.
15 Q. That led to you stating Unioncon is
16 resisting, arguing that -- that it's
17 unfair?
18 A. Yes.
19 Q. Where is Unioncon based?
20 A. In Holland.
21 Q. What do they do?
22 A. They sell footwear.
23 Q. Who are you dealing with at
24 Unioncon?
25 A. His name is Joop, J-O-O-P, and

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1 B. Ullmann
 2 right now his last name eludes me.
 3 MR. HOFFMAN: Simons.
 4 A. S-I-M-O-N-S. No relations.
 5 Q. What was your next communication
 6 after August 11th with Issie Wiseman
 7 regarding this issue?
 8 A. I don't recall.
 9 Q. Do you recall having a
 10 communication with Issie Wiseman after you
 11 sent this e-mail about the modest
 12 financial penalty?
 13 A. I don't. I don't.
 14 Q. You don't recall having any
 15 conversations; do you recall any e-mails?
 16 A. I don't.
 17 Q. Any discussion whatsoever?
 18 A. I don't recall.
 19 Q. Do you recall indicating to
 20 Mr. Wiseman that he shouldn't worry about
 21 the \$25,000 because he would more than
 22 make that up by amending the agreement to
 23 extend the renewal period?
 24 A. I absolutely do not recall that and
 25 clearly could not have said it because, as

252

1 B. Ullmann
 2 Q. Never deliberately?
 3 A. Untruthful.
 4 Q. I understand that's your testimony.
 5 MR. OFFENHARTZ: Off the
 6 record.
 7 (Time noted: 4:52 p.m.)
 8
 9 -----
 10 BERNT ULLMANN
 11
 12 Subscribed and Sworn to before me
 13 this day of 2007
 14
 15 -----
 16 NOTARY PUBLIC
 17
 18
 19
 20
 21
 22
 23
 24
 25

251

1 B. Ullmann
 2 we have discussed, the agreements need to
 3 be signed by Russell Simmons, by Bob
 4 Skinner.
 5 There is no way, ever, that I would
 6 know how they would ultimately act and if
 7 they were both going to sign, so I
 8 couldn't have made such statements.
 9 Q. Mr. Ullmann, have you ever, in the
 10 course of your business dealings, ever
 11 stretched the truth or used words a little
 12 bit out of context as part of your
 13 negotiations?
 14 MR. HOFFMAN: Objection to
 15 the form.
 16 A. We have previously, today, seen one
 17 example in the e-mail where I wish I had
 18 been more specific with my use of
 19 language. I'm never deliberately
 20 untruthful.
 21
 22
 23
 24
 25

253

1 EXHIBITS
 2
 3 DEFENDANT'S
 4 FOR IDENTIFICATION DESCRIPTION PAGE
 5 1 Two-page exhibit bearing 76
 6 Bates TOR899 and TOR900
 7 2 Three-page exhibit 90
 8 Bates PF0130 through 0132
 9 3 Four-page document, 95
 10 Bates PF0141 through 0144
 11 4 Six-page document, 102
 12 Bates PF0147 through 0152
 13 5 PF0153, one-page document 121
 14 6 Four-page document 129
 15 Bates-stamped PF0154
 16 through 0157
 17 7 Two-page document, 138
 18 Bates PF0164 through 165
 19 8 One-page document, 148
 20 Bates PF0162
 21 9 E-mail from witness to 161
 22 Mr. Gramke
 23 10 E-mail to Mr. Bitton, 191
 24 dated January 24, 2007
 25 11 PF0194 through 0198 209
 12 Document Bates 218
 13 PF0203 through PF0207
 14 Document Bates-stamped 221
 15 PF0208 through PF0212
 16
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 22
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 24
 25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ----- x

4 PHAT FASHIONS, LLC,

5

6 Plaintiff,

1:070103278***

7 -against-

8 TORNADO IMPORTS (CANADA), INC.,

9

Defendants.

10

----- x

11

12 CONTINUED DEPOSITION of the Plaintiff, PHAT
13 FASHIONS, LLC, by BERNT ULLMANN, taken by the
14 Defendant pursuant to Notice, held at the offices
15 of Gibson Dunn & Crutcher, 202 Park Avenue, New
16 York, New York 10166, on November 2, 2007, at
17 9:10 a.m., before a Notary Public of the State of
18 New York.

19

20

21 *****

- BARRISTER REPORTING SERVICE, INC.

22

120 Broadway

New York, N.Y. 10271

23

212-732-8066

24

25

<p style="text-align: right;">279</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 PRYOR CASHMAN, LLP</p> <p>5 Attorneys for Plaintiffs</p> <p>6 410 Park Avenue</p> <p>7 New York, New York 10022</p> <p>8</p> <p>9 BY: PHILIP R. HOFFMAN, ESQ.</p> <p>10</p> <p>11 GIBSON DUNN & CRUTCHER</p> <p>12 Attorneys for Defendants</p> <p>13 202 Park Avenue</p> <p>14 New York, New York 10166</p> <p>15</p> <p>16 BY: ADAM H. OFFENHARTZ, ESQ.</p> <p>17 -and-</p> <p>18 LAURA M. LEITNER, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">xxxxx</p>	<p style="text-align: right;">281</p> <p>1 B. Ullmann</p> <p>2 Mr. Nathanson with the minimum net sales</p> <p>3 numbers?</p> <p>4 A. No one did.</p> <p>5 Q. I'm sorry?</p> <p>6 A. No one did.</p> <p>7 Q. No one did. How did he get the</p> <p>8 minimum net sales figures?</p> <p>9 A. He probably worked backwards from</p> <p>10 the royalty numbers.</p> <p>11 Q. What do you mean by that; could you</p> <p>12 explain that further, please?</p> <p>13 A. Yes. The GMRs, guaranteed minimum</p> <p>14 royalties, are a function, in this case,</p> <p>15 7 percent of the net sales number. We</p> <p>16 provided the GMRs and thus he did the math</p> <p>17 to get the minimum net sales, which is</p> <p>18 something he very often does.</p> <p>19 Ultimately, when we are negotiating</p> <p>20 these deals, we're looking at what our</p> <p>21 revenue stream is or what our revenue</p> <p>22 stream will be. The revenue stream is</p> <p>23 really the GMR and not the net sales, so</p> <p>24 that's often what's negotiated. And then</p> <p>25 the net sales become a function of that.</p>
<p style="text-align: right;">280</p> <p>1 B. Ullmann</p> <p>2 BERT ULLMANN,</p> <p>3 Having been duly re-sworn before a Notary</p> <p>4 Public of the State of New York, was</p> <p>5 examined and testified as follows:</p> <p>6</p> <p>7 CONTINUED EXAMINATION</p> <p>8 BY MR. OFFENHARTZ:</p> <p>9 Q. Good morning, Mr. Ullmann.</p> <p>10 A. Good morning.</p> <p>11 Q. Mr. Ullmann, would you please -- I</p> <p>12 would like to direct your attention to</p> <p>13 Defendant's Exhibit No. 3 for a moment.</p> <p>14 Do you recall looking at this</p> <p>15 document yesterday?</p> <p>16 A. I do.</p> <p>17 Q. Would you turn to the third page of</p> <p>18 Defendant's Exhibit No. 3, which bears the</p> <p>19 Bates number PF0142?</p> <p>20 A. Yes.</p> <p>21 Q. Eli Nathanson of the Pryor Cashman</p> <p>22 firm is the person who prepared this</p> <p>23 document, correct?</p> <p>24 A. I believe that to be true.</p> <p>25 Q. Do you know who provided</p>	<p style="text-align: right;">282</p> <p>1 B. Ullmann</p> <p>2 Q. In this instance, the GMR, the</p> <p>3 guaranteed minimum royalties, is what</p> <p>4 percent?</p> <p>5 A. 7.</p> <p>6 Q. Is 7 percent a standard royalty</p> <p>7 figure for Phat Fashions?</p> <p>8 A. It is not. It is lower than our</p> <p>9 standard.</p> <p>10 Q. What is your standard?</p> <p>11 A. 8 percent.</p> <p>12 Q. I'd like to now direct your</p> <p>13 attention to Defendant's Exhibit No. 10.</p> <p>14 A. Thank you.</p> <p>15 Q. You're welcome.</p> <p>16 Do you recall reviewing this</p> <p>17 document yesterday?</p> <p>18 A. I do.</p> <p>19 Q. Would you take a moment to look at</p> <p>20 it again, please?</p> <p>21 A. Okay.</p> <p>22 Q. I direct your attention to the</p> <p>23 second and third paragraphs where you</p> <p>24 write, "We are getting very close to a</p> <p>25 situation where you would not be able to</p>

<p style="text-align: right;">295</p> <p>1 B. Ullmann</p> <p>2 seen the documents either. It</p> <p>3 sounds to me from what he said and</p> <p>4 what she read, is that they may not</p> <p>5 have any mention of Tornado or</p> <p>6 Vis-a-Vis, but I will under</p> <p>7 undertake to look at those</p> <p>8 documents and find out what they</p> <p>9 contain and if they're responsive,</p> <p>10 with the appropriate redactions,</p> <p>11 whatever, produce them to you.</p> <p>12 Absolutely.</p> <p>13 REQUEST NOTED:</p> <p>14 Q. Do you know what royalties Tornado</p> <p>15 paid to Phat Fashions in 2006?</p> <p>16 A. Without looking, no.</p> <p>17 Q. What would you look at?</p> <p>18 A. I would ask our CFE to pull the</p> <p>19 numbers.</p> <p>20 Q. Did you ever find yourself doing</p> <p>21 that?</p> <p>22 A. Did I ever? I would assume I did.</p> <p>23 Q. He would have provided you the</p> <p>24 numbers?</p> <p>25 A. Again, yes, I would assume he did.</p>	<p style="text-align: right;">297</p> <p>1 B. Ullmann</p> <p>2 MR. HOFFMAN: Objection to</p> <p>3 the form.</p> <p>4 A. I seem to recall that the first</p> <p>5 round of numbers that we discussed seemed</p> <p>6 very low and, hence, there was a very</p> <p>7 casual conversation; if we're going to</p> <p>8 even consider it, you better up your</p> <p>9 numbers, and that was the end of it. He</p> <p>10 upped the number hand; that was it.</p> <p>11 Q. Do you recall ever asking your CFE</p> <p>12 to provide you with royalty figures or</p> <p>13 other sales figures regarding Tornado?</p> <p>14 A. Specifically, no.</p> <p>15 Q. You said "specifically." Do you</p> <p>16 think you would have generally?</p> <p>17 A. I specifically was referring to --</p> <p>18 I don't think I would have singled out</p> <p>19 Tornado, but obviously, in the course of</p> <p>20 business dealings, I would have total</p> <p>21 revenue conversations with my CFE and the</p> <p>22 Tornado revenues would be part of our</p> <p>23 total. But I wouldn't be looking at them</p> <p>24 specifically.</p> <p>25 Q. When you recommended to Mr. Skinner</p>
<p style="text-align: right;">296</p> <p>1 B. Ullmann</p> <p>2 Q. When you were considering whether</p> <p>3 or not to continue your relationship with</p> <p>4 Tornado, did you ask the CFE to give you</p> <p>5 royalty information regarding Tornado?</p> <p>6 A. I think that he provided -- I don't</p> <p>7 know because I'm not sure that I would</p> <p>8 have, and I'll tell you why I wasn't</p> <p>9 looking originally at this situation at</p> <p>10 all when the dialogue started.</p> <p>11 The contract was expiring at the</p> <p>12 end of '07. Through our proceedings, I've</p> <p>13 heard that, I guess, this amendment</p> <p>14 conversation came to a head early in '06;</p> <p>15 significantly earlier than when I was</p> <p>16 prepared to look at it. When it did come</p> <p>17 to a head, however, it came with a</p> <p>18 proposal from Issie Wiseman.</p> <p>19 So there wasn't so much an issue of</p> <p>20 what the past performance had been. I had</p> <p>21 the numbers in front of me of what Tornado</p> <p>22 was proposing the numbers would be going</p> <p>23 forward.</p> <p>24 Q. Did those numbers seem sufficient</p> <p>25 to you?</p>	<p style="text-align: right;">298</p> <p>1 B. Ullmann</p> <p>2 that Phat Fashions not proceed with</p> <p>3 Tornado in Canada, was the amount of sales</p> <p>4 Tornado was making one of the factors that</p> <p>5 went into your decision?</p> <p>6 MR. HOFFMAN: Objection to</p> <p>7 form. You can answer.</p> <p>8 A. It could have been one factor and</p> <p>9 that would be the future promised sales,</p> <p>10 the guaranteed minimum net sales and the</p> <p>11 guaranteed minimum net royalties could</p> <p>12 have been a factor. A factor could have</p> <p>13 been that Tornado's royalty percentage was</p> <p>14 7; Bitton royalty percentage is 8. A</p> <p>15 factor could have been that Bitton, along</p> <p>16 with the distribution, or rather the</p> <p>17 wholesale agreement, also offered the</p> <p>18 opening of three flagship stores in</p> <p>19 Canada.</p> <p>20 A factor could have been that there</p> <p>21 was a conversation with Bitton about</p> <p>22 opening of a number of freestanding stores</p> <p>23 in the United States. But factors would</p> <p>24 probably also have been that we were</p> <p>25 having increasingly difficult relations</p>

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1 B. Ullmann
2 with Tornado; he's had a major falling out
3 with BP Clothing, our largest licensee.
4 During Bitton's due diligence
5 process, they went out to every single one
6 of Tornado's customers, they have a huge
7 report available, very unfavorable to Mr.
8 Wiseman and Tornado and their conduct in
9 the market.
10 I had also received independently,
11 because I do recognize that Mr. Bitton and
12 his group was obviously a party in the
13 process, that they're not necessarily at
14 neutral in the business, but there were
15 also independent conversations from other
16 operators in the market that were not
17 favorable towards Tornado.
18 So there are a lot of things that
19 come into play and I can't recall to which
20 extent either one of them, and maybe more
21 that I'm not mentioning now, played into
22 the final decision.
23 Q. Mr. Ullmann, who would have the
24 most knowledge on Tornado sales of Baby
25 Phat products?

300

1 B. Ullmann
2 MR. HOFFMAN: Objection to
3 the form. Assumes facts not in
4 evidence.
5 A. Run that past me again.
6 Q. Mr. Ullmann, would the CFE be the
7 person who would have the -- the person
8 most knowledgeable regarding Tornado sales
9 of any products under the Phat Fashions
10 rubric?
11 A. Under the Phat Fashions what?
12 Q. Under the Phat Fashions products?
13 MR. HOFFMAN: Under the Phat
14 Fashions rubric, is what he said.
15 Q. Let me give you the question again.
16 Mr. Ullmann, do you know the amount
17 of sales and royalties generated by
18 Tornado in 2006?
19 A. I do not.
20 Q. Who would know that information?
21 A. Probably the Tornado executives
22 would be the closest to know that
23 information accurately.
24 Q. Who, at Phat Fashions, would have
25 that information?

301

1 B. Ullmann
2 A. I don't think anyone at Phat
3 Fashions would have that information in
4 totality because our agreement covered
5 only certain part of the Phat Fashions
6 products. The reality is there was a
7 separate agreement, to the best of my
8 understanding, with BP Clothing and I
9 don't know that we would know exactly -- I
10 don't believe we ever saw it. I don't
11 think it's part of our files and we were
12 not involved in that relationship.
13 Q. Mr. Ullmann, is what you're telling
14 me, that there's no one at Phat Fashions
15 who would know the amount of royalties
16 Tornado sent to Phat Fashions in 2006; is
17 that your testimony?
18 MR. HOFFMAN: Objection to
19 the form.
20 A. That wasn't your question, so
21 that's not my testimony.
22 Q. Actually, I think it was my
23 question, but let me ask you again.
24 MR. HOFFMAN: There have
25 been a couple so clear it up.

302

1 B. Ullmann
2 Q. Mr. Ullmann, who, at Phat Fashions,
3 would know what royalties Tornado sent in
4 2006?
5 A. Our CFE.
6 Q. Certainly, you would consider
7 knowing the amount of royalties you
8 received to be an important data point in
9 a business relationship, wouldn't you?
10 MR. HOFFMAN: Objection to
11 the form.
12 A. Knowing the amount of royalties is
13 an important business point?
14 Q. Yes.
15 A. I concur, yes. But knowing it
16 offhand at any time when you're talking
17 about one out of 30 licensees, I don't
18 know that I agree that that is a springing
19 business point.
20 Q. Do you know what Tornado paid in
21 royalties to Phat Fashions in 2005?
22 A. I don't.
23 Q. In 2004?
24 A. I don't.
25 Q. Do you know what they paid to date

<p style="text-align: right;">307</p> <p>1 B. Ullmann</p> <p>2 underwear and loungewear. They have</p> <p>3 underwear and loungewear sold in the</p> <p>4 Canadian market right now through a</p> <p>5 third-party not affiliated with Tornado</p> <p>6 and they're paying us royalties on those</p> <p>7 sales.</p> <p>8 We also have a company called GHG;</p> <p>9 it's an international bag licensee. They</p> <p>10 currently have sales in Canada. They are</p> <p>11 paying us royalties on sales from Canada</p> <p>12 and, of course, from the rest of the world</p> <p>13 and the Check Group is paying royalties,</p> <p>14 of course, on sales also from the U.S.</p> <p>15 So I believe that was your</p> <p>16 question; the answer is: Yes, we are.</p> <p>17 And there may be more; these are the ones</p> <p>18 I remember.</p> <p>19 Q. BP Clothing, the royalty rate they</p> <p>20 provide to Phat Fashions, I assume, is</p> <p>21 8 percent?</p> <p>22 A. Yes, that's correct.</p> <p>23 MR. OFFENHARTZ: Can you</p> <p>24 read back the last answer.</p> <p>25 (Whereupon the record was</p>	<p style="text-align: right;">309</p> <p>1 B. Ullmann</p> <p>2 today that you first became aware of</p> <p>3 Vis-a-Vis on Tuesday of this week; is that</p> <p>4 correct?</p> <p>5 A. I believe that is correct. If I've</p> <p>6 seen it before, I can't recall.</p> <p>7 Q. Your testimony today regarding</p> <p>8 Vis-a-Vis having a relationship with BP</p> <p>9 Clothing, is that something you also</p> <p>10 learned of Tuesday of this week?</p> <p>11 A. No, no. I was aware of there being</p> <p>12 some type of a relationship and of a</p> <p>13 company -- and I'm not certain how Issie</p> <p>14 Wiseman is involved, but I certainly was</p> <p>15 aware that he was involved on some level</p> <p>16 and that this company had distribution</p> <p>17 rights for BP in Canada.</p> <p>18 Q. Which company? You said "this</p> <p>19 company"; which company?</p> <p>20 A. Vis-a-Vis, I guess.</p> <p>21 Q. When were you aware of that?</p> <p>22 A. I wasn't aware of it being</p> <p>23 Vis-a-Vis. I was aware of there being a</p> <p>24 company in Canada where Issie Wiseman had</p> <p>25 some type of involvement and I was aware</p>
<p style="text-align: right;">308</p> <p>1 B. Ullmann</p> <p>2 read back by the reporter.)</p> <p>3 Q. The Check Group pays a royalty rate</p> <p>4 of 8 percent to Phat Fashions?</p> <p>5 A. I honestly don't recall. The</p> <p>6 reason I'm saying that is I'm thinking</p> <p>7 they're not. They are one of our first</p> <p>8 licensees. The principal at the time was</p> <p>9 a partner of Russell's and I have, at</p> <p>10 least sitting here, a sense that he has a</p> <p>11 favorable royalty rate.</p> <p>12 Q. When you say "favorable," do you</p> <p>13 know how favorable?</p> <p>14 A. I don't know for a fact. I want to</p> <p>15 say also because underwear and loungewear</p> <p>16 is typically not something that's sold a</p> <p>17 lot on the floors of Macy's. I want to</p> <p>18 say 6 percent, but it's only an educated</p> <p>19 guess.</p> <p>20 Q. GHG had a royalty rate of 8 percent</p> <p>21 with Phat Fashions?</p> <p>22 A. No, GHG has a different type</p> <p>23 arrangement. They pay royalties on FOB</p> <p>24 sales. I believe the rate is 20 percent.</p> <p>25 Q. Mr. Ullmann, you testified earlier</p>	<p style="text-align: right;">310</p> <p>1 B. Ullmann</p> <p>2 of this company, that we now know is</p> <p>3 Vis-a-Vis, they had distribution rights.</p> <p>4 Q. Mr. Ullmann, you discussed a report</p> <p>5 by Gaby Bitton on his discussions with</p> <p>6 customers of Tornado earlier today?</p> <p>7 A. Yes. Actually -- go ahead.</p> <p>8 Q. I was going to ask you to elaborate</p> <p>9 on that.</p> <p>10 MR. HOFFMAN: I'm going to</p> <p>11 object to the form. Go ahead.</p> <p>12 A. What I was going to say is: I</p> <p>13 don't think that the report was actually</p> <p>14 compiled by Gaby; I think it was compiled</p> <p>15 by Isaac. And I believe I misstated his</p> <p>16 last name yesterday when I referred to</p> <p>17 Isaac. His correct name is Mimran,</p> <p>18 M-I-M-R-A-N. It's funny, I just recalled</p> <p>19 that on the train in this morning. It's</p> <p>20 weird, I have no idea why or how.</p> <p>21 Q. Can you elaborate further on this</p> <p>22 report?</p> <p>23 MR. HOFFMAN: Objection to</p> <p>24 the form.</p> <p>25 A. Well, I've never seen the report so</p>

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1 B. Ullmann
 2 I want to say that, but Isaac has stated
 3 that this report is very damaging to Issie
 4 and Tornado and speaks to a certain level
 5 of negligent, poor service, lack of
 6 customer follow-through, lack of delivery,
 7 focus or consolidation on sales only to a
 8 limited number of retailers that were not
 9 necessarily strong or good for the image
 10 of the brand. Statements of that nature.
 11 Q. Did you ask to see a copy of this
 12 report?
 13 A. I didn't.
 14 Q. Did you ask how Mr. Mimran prepared
 15 this report?
 16 A. He volunteered that they have been
 17 out having customer meetings with all key
 18 accounts in Canada. But the reality is, I
 19 don't know how this was done, I don't know
 20 when this was done and consequently, I
 21 never asked to see the documents.
 22 Q. Did he ever send you a summary of
 23 this report?
 24 A. He did not.
 25 Q. Did he tell you how many customers

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1 B. Ullmann
 2 he spoke with?
 3 A. He did not.
 4 Q. Do you recall when you had this
 5 discussion?
 6 A. We talked about it briefly within
 7 the last ten days. He had brought it to
 8 me -- to my attention early, but I can't
 9 recall exactly when he brought it to my
 10 attention the first time.
 11 Q. In what context did you speak with
 12 Mr. Mimran in the last ten days?
 13 A. In the context of Mr. Mimran not
 14 being particularly happy with the state of
 15 affairs in Canada.
 16 Q. What do you mean by that?
 17 A. We had a discussion over the phone
 18 where he was basically alluding to being
 19 uncertain about the direction of the
 20 company. As we have talked about, Russell
 21 Simmons has recently stepped down as the
 22 CEO of Phat Fashions.
 23 We had a few new product
 24 initiatives linked to his name; Russell
 25 Simmons Argyle Culture, Atman. These

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1 B. Ullmann
 2 properties will not be Phat Fashions
 3 properties going forward, but I believe
 4 Isaac Mimran had envisioned that they
 5 would be representing these properties, as
 6 well as Phat Farm and another property
 7 called XV.
 8 And thus, Isaac is, in general,
 9 uncertain about what's happening and, as
 10 such, I think uncomfortable at this
 11 particular juncture of time and wanted
 12 some assurances and wanted to kind of go
 13 on the record with me that he is not
 14 pleased.
 15 Q. When you mentioned concerned about
 16 the company in your answer, you were
 17 referring to Phat Fashions?
 18 A. Yes, concerned about what was going
 19 on, yes.
 20 Q. How did the report that Mr. Mimran
 21 and/or his colleagues put together
 22 regarding Tornado come up in your
 23 discussion in the last ten days about his
 24 concerns regarding Phat Fashions?
 25 A. As I said, I do recall that he has

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1 B. Ullmann
 2 brought it up to me on a couple of
 3 occasions previously. I think he brought
 4 it up again in the context that I may, in
 5 frustration, have said something along the
 6 lines of, Canada is really proving to be a
 7 great territory for us, and saying, I'm
 8 here on the phone with you, you're unhappy
 9 and now while we have a clear ruling from
 10 our lawyers that the contract terminates,
 11 nevertheless, I find myself still
 12 embroiled in a conflict with Mr. Wiseman.
 13 And I believe he offered-up,
 14 Conflict with Mr. Wiseman, how dare he?
 15 We have this huge report, he should be
 16 happy that -- and so on and so forth.
 17 Q. Did Mr. Mimran describe to you how
 18 he prepared the report?
 19 A. He did not.
 20 Q. Do you know if Mr. Mimran went to
 21 these meetings or was it Mr. Bitton or
 22 someone else?
 23 MR. HOFFMAN: Objection to
 24 the form.
 25 A. I don't know. I don't know.

<p style="text-align: right;">315</p> <p>1 B. Ullmann</p> <p>2 Q. He didn't tell you or you don't</p> <p>3 recall?</p> <p>4 A. No, he didn't tell me. I don't</p> <p>5 know.</p> <p>6 Q. What did you tell Mr. Mimran in</p> <p>7 response to the concerns he raised about</p> <p>8 Phat Fashions, your conversations over the</p> <p>9 last ten days?</p> <p>10 A. I said that I would get back to</p> <p>11 him, which I haven't as yet.</p> <p>12 MR. OFFENHARTZ: Off the</p> <p>13 record.</p> <p>14 (Whereupon a discussion was</p> <p>15 held off the record.)</p> <p>16 Q. What is Gaby Bitton's full name?</p> <p>17 A. If that's not his full name, I</p> <p>18 don't know.</p> <p>19 Q. Do you know if his first name is</p> <p>20 Gabriel?</p> <p>21 A. I don't know.</p> <p>22 MR. OFFENHARTZ: Do you?</p> <p>23 MR. HOFFMAN: Yes, it's</p> <p>24 Gabriel.</p> <p>25 Q. You testified that you also had</p>	<p style="text-align: right;">317</p> <p>1 B. Ullmann</p> <p>2 Mr. Mimran's report may have been colored</p> <p>3 by history between Mr. Bitton and</p> <p>4 Mr. Wiseman?</p> <p>5 MR. HOFFMAN: Objection to</p> <p>6 the form. You can answer.</p> <p>7 A. I haven't seen the report, so</p> <p>8 there's no way for me to have an opinion</p> <p>9 about the report. But I felt that knowing</p> <p>10 that the agreement was set to expire at</p> <p>11 the end of this year anyway, I felt that</p> <p>12 it was less pertinent to follow up on that</p> <p>13 information.</p> <p>14 Q. Did you inform Mr. Wiseman of the</p> <p>15 conclusions that Mr. Mimran shared with</p> <p>16 you regarding Mr. Mimran's report?</p> <p>17 MR. HOFFMAN: Objection to</p> <p>18 the form.</p> <p>19 A. I don't recall. I could have, but</p> <p>20 I don't recall.</p> <p>21 Q. As you sit here today, do you</p> <p>22 recall any discussions with Mr. Wiseman</p> <p>23 where you expressed dissatisfaction on the</p> <p>24 part of Phat Fashions with the</p> <p>25 relationship between Phat Fashions and</p>
<p style="text-align: right;">316</p> <p>1 B. Ullmann</p> <p>2 independent conversations after learning</p> <p>3 of the report pulled together by Mr.</p> <p>4 Bitton or Mr. Mimran.</p> <p>5 Do you recall that?</p> <p>6 A. Can you please restate your</p> <p>7 question; I'm not understanding.</p> <p>8 MR. OFFENHARTZ: Certainly.</p> <p>9 Strike that. I'll ask it again.</p> <p>10 Q. Did Mr. Bitton provide you with the</p> <p>11 information from the report that was</p> <p>12 prepared or did Mr. Mimran?</p> <p>13 MR. HOFFMAN: Objection to</p> <p>14 the form. Objection to form.</p> <p>15 A. Mr. Mimran did.</p> <p>16 Q. Did you take any independent steps</p> <p>17 following that conversation with</p> <p>18 Mr. Mimran to assess the information</p> <p>19 Tornado was having with its customers?</p> <p>20 A. I did not.</p> <p>21 Q. Did you instruct anyone at Phat</p> <p>22 Fashions to reach out to customers of</p> <p>23 Tornado?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Did you have any concerns that</p>	<p style="text-align: right;">318</p> <p>1 B. Ullmann</p> <p>2 Tornado?</p> <p>3 A. I believe we had a conversation</p> <p>4 about an oversaturation of product in one</p> <p>5 particular account. This is a while back.</p> <p>6 I want to say the account is either called</p> <p>7 Foot Action or Action Footwear; something</p> <p>8 along those lines. I can't recall the</p> <p>9 exact name.</p> <p>10 This was specifically after someone</p> <p>11 brought to my attention that the product</p> <p>12 didn't look good there and was</p> <p>13 oversaturated. We did also have a</p> <p>14 conversation after Steven Feiner of BP</p> <p>15 Clothing decided to terminate their</p> <p>16 relationship and the conversation was</p> <p>17 centering around the fact that</p> <p>18 Mr. Feiner's expectation was that he could</p> <p>19 more than double the turnover for his</p> <p>20 brand -- for their brand, Baby Phat in</p> <p>21 Canada, while actually improving the</p> <p>22 presentation and integrity of the brand in</p> <p>23 the market. And we did talk about that.</p> <p>24 MR. OFFENHARTZ: Can you</p> <p>25 read that answer back.</p>

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1 B. Ullmann
 2 (Whereupon the record was
 3 read back by the reporter.)
 4 Q. When did you have that discussion
 5 with Mr. Feiner?
 6 A. I can't recall exactly, but I want
 7 to say that it's approximately a year ago,
 8 so it takes us back some time to maybe
 9 September, October, November of '06.
 10 Q. Other than these two conversations,
 11 do you recall any other conversation you
 12 had with anyone at Tornado where you
 13 expressed concern or dissatisfaction with
 14 the way Tornado was operating as a
 15 licensee of Phat Fashions?
 16 A. The only person I would have had
 17 conversations with would have been Issie
 18 Wiseman. So there would have been no one
 19 else. There may have been other
 20 conversations.
 21 I recall a conversation with him
 22 about a Randa; she's an owner of a company
 23 called Vibe or Vibes in Montreal, Canada.
 24 Q. What was the nature of that
 25 conversation?

320

1 B. Ullmann
 2 A. This is, again, going far back. I
 3 can only recall very broad strokes.
 4 Something about oversaturation of the
 5 brand, the brand not looking good in the
 6 market.
 7 Q. You mentioned this is going far
 8 back; do you know if this is 2004?
 9 A. I don't recall.
 10 Q. 2005?
 11 A. I don't know.
 12 Q. You said far back?
 13 A. Yes.
 14 Q. I'm just trying to --
 15 A. It was not in 2007. I would say
 16 the very earliest it could have been would
 17 be early 2006. Probably more likely 2005
 18 to try, but I don't recall it. Sorry.
 19 Q. Do you recall any other discussions
 20 with Mr. Wiseman where you expressed
 21 concern regarding the manner in which
 22 Tornado was operating as a licensee of
 23 Phat Fashions in Canada?
 24 A. No, not as I sit here now.
 25 Q. Did you keep a file of concerns

321

1 B. Ullmann
 2 regarding licensees?
 3 A. No.
 4 Q. Is there anyone at Phat Fashions
 5 who might have additional information
 6 regarding such concerns?
 7 A. I believe that's unlikely.
 8 Q. Mr. Ullmann, can you explain to me
 9 your understanding of the relationship
 10 between BP Clothing and Vis-a-Vis?
 11 MR. HOFFMAN: Objection to
 12 the form.
 13 A. My understanding is that
 14 Vis-a-Vis -- and I've only come to learn
 15 very recently that the name of the company
 16 was Vis-a-Vis -- that this company was a
 17 distributor for BP Clothing.
 18 Q. Have you seen any agreements
 19 between BP Clothing and Vis-a-Vis?
 20 A. I have not.
 21 Q. Did BP Clothing pay Phat Fashions
 22 royalties on the sale of goods BP Clothing
 23 made to Vis-a-Vis?
 24 A. I don't know.
 25 Q. Who at the company would know?

322

1 B. Ullmann
 2 A. Maybe our CFE, but only if those
 3 sales are broken out.
 4 Q. If you were to ask your CFE for a
 5 run of royalties received from BP
 6 Clothing, can he provide those to you?
 7 A. Yes.
 8 Q. If you asked your CFE to provide
 9 you with a run of royalties paid by BP
 10 clothing based on territory, could he do
 11 that?
 12 A. Probably not.
 13 Q. Could he provide you a run on
 14 royalties made by BP Clothing broken down
 15 by product line?
 16 A. Run that past me again.
 17 MR. OFFENHARTZ: Can you
 18 read the question, please.
 19 (Whereupon the record was
 20 read back by the reporter.)
 21 A. If by "product line," you mean
 22 jeans, T-shirts, the answer is no, he
 23 couldn't.
 24 Q. How could he break it down?
 25 MR. HOFFMAN: Objection to

<p style="text-align: right;">323</p> <p>1 B. Ullmann</p> <p>2 the form.</p> <p>3 A. It's a total.</p> <p>4 Q. A total for Baby Phat?</p> <p>5 A. A total for Baby Phat grants that</p> <p>6 they have, yes.</p> <p>7 Q. Who is the current CFE?</p> <p>8 MR. HOFFMAN: Of which</p> <p>9 company?</p> <p>10 Q. Who is the current CFE of Phat</p> <p>11 Fashions?</p> <p>12 A. Bob Bruno.</p> <p>13 Q. Who is the current CFE of Kellwood?</p> <p>14 A. Craig Kleffner, K-L-E-F-F-N-E-R.</p> <p>15 Q. Over recent series of questions I</p> <p>16 have asked you and in your answers, we've</p> <p>17 both been referring to the CFE.</p> <p>18 Were you referring to the CFE of</p> <p>19 Phat Fashions or the CFE of Kellwood or</p> <p>20 both?</p> <p>21 A. I was referring to the CFE of Phat</p> <p>22 Fashions, but not Bob Bruno.</p> <p>23 Q. Why is that?</p> <p>24 A. Because Bob Bruno is new in his</p> <p>25 position and our old CFE, Peter Morris, is</p>	<p style="text-align: right;">325</p> <p>1 B. Ullmann</p> <p>2 with or that you're displeased with?</p> <p>3 A. Based upon personal interaction.</p> <p>4 Q. Personal interaction with whom?</p> <p>5 A. The licensee.</p> <p>6 Q. Can you tell me about your personal</p> <p>7 interaction with Issie Wiseman?</p> <p>8 MR. HOFFMAN: Objection to</p> <p>9 the form. Go ahead.</p> <p>10 A. I can, it's very open-ended. Do</p> <p>11 you want to know from the beginning of our</p> <p>12 relationship?</p> <p>13 Q. Why don't you tell me about the</p> <p>14 communications you've had with Mr. Wiseman</p> <p>15 in 2006?</p> <p>16 MR. HOFFMAN: Other than</p> <p>17 what was testified to yesterday?</p> <p>18 MR. OFFENHARTZ: No,</p> <p>19 actually --</p> <p>20 Q. Mr. Ullmann, please tell me about</p> <p>21 your communications with Mr. Wiseman in</p> <p>22 2006.</p> <p>23 MR. HOFFMAN: I object on</p> <p>24 the ground of asked and answered.</p> <p>25 He can answer it again.</p>
<p style="text-align: right;">324</p> <p>1 B. Ullmann</p> <p>2 no longer with the company.</p> <p>3 MR. HOFFMAN: As I've</p> <p>4 represented to you, Adam, I will</p> <p>5 reach out to find Peter Morris and</p> <p>6 set up a date for a deposition.</p> <p>7 MR. OFFENHARTZ: Thank you.</p> <p>8 THE WITNESS: He'll love</p> <p>9 that, now that he's not with the</p> <p>10 company anymore.</p> <p>11 MR. HOFFMAN: I will</p> <p>12 endeavor with him to set up a date</p> <p>13 and we'll go from there.</p> <p>14 Q. Does Phat Fashions provide annual</p> <p>15 evaluations of its licensees?</p> <p>16 A. No.</p> <p>17 Q. Does Phat Fashions provide</p> <p>18 quarterly evaluations of its licensees?</p> <p>19 A. No.</p> <p>20 Q. Does Phat Fashions have any</p> <p>21 internal process whereby it reviews its</p> <p>22 licensees on a regular basis?</p> <p>23 A. No.</p> <p>24 Q. How do you go about determining</p> <p>25 which of your licensees you're pleased</p>	<p style="text-align: right;">326</p> <p>1 B. Ullmann</p> <p>2 A. I can't recall, obviously, the full</p> <p>3 nature of all conversations, but as</p> <p>4 discussed yesterday, there was</p> <p>5 communication back and forth in '06 about</p> <p>6 Issie Wiseman attempting to renew a</p> <p>7 license that was expiring and didn't</p> <p>8 provide for an option to renew. He</p> <p>9 attempted to do this very early and</p> <p>10 outside the customary window. As you</p> <p>11 heard yesterday, I, therefore, didn't</p> <p>12 necessarily immerse myself in this</p> <p>13 dialogue, but moved it forward internally.</p> <p>14 We had some dialogue surrounding</p> <p>15 him losing the Baby Phat products and we</p> <p>16 had dialogue when I assisted him in</p> <p>17 obtaining the license for Coogi and I</p> <p>18 specifically assisted him, and I have come</p> <p>19 to understand that he is now a licensee of</p> <p>20 the Coogi brand. That's some of the</p> <p>21 dialogue that I can recall.</p> <p>22 Q. Are there any dialogues that you</p> <p>23 can recall that you have not included in</p> <p>24 your answer?</p> <p>25 A. Not deliberately.</p>

<p style="text-align: right;">339</p> <p>1 B. Ullmann</p> <p>2 agreement in place and clearly any payment</p> <p>3 is a royalty payment. It's not a</p> <p>4 commission. There are no net commissions;</p> <p>5 they're royalty payments.</p> <p>6 Q. What is the royalty rate indicated</p> <p>7 on this document?</p> <p>8 A. 7 percent.</p> <p>9 MR. HOFFMAN: Objection to</p> <p>10 the form.</p> <p>11 Q. The 7 percent royalty rate for</p> <p>12 Tornado was established by the license</p> <p>13 agreement; is that your understanding?</p> <p>14 MR. HOFFMAN: Objection to</p> <p>15 the form.</p> <p>16 A. That is my understanding.</p> <p>17 Q. The 7 percent rate that Vis-a-Vis</p> <p>18 was paying was established by that license</p> <p>19 agreement as well?</p> <p>20 MR. HOFFMAN: Objection to</p> <p>21 the form.</p> <p>22 A. Phat Fashions does not have a</p> <p>23 licensing agreement with Vis-a-Vis, so no,</p> <p>24 that is not correct. I'm going to assume</p> <p>25 that the term "commission" is probably</p>	<p style="text-align: right;">341</p> <p>1 B. Ullmann</p> <p>2 MR. HOFFMAN: Objection to</p> <p>3 the form.</p> <p>4 A. I understand that we were receiving</p> <p>5 some payments. I did not know they were</p> <p>6 from a company called Vis-a-Vis and I have</p> <p>7 always assumed that they were tying back</p> <p>8 to the relationship that this entity had</p> <p>9 with some of our licensors in the</p> <p>10 territory.</p> <p>11 Q. Which licensor?</p> <p>12 A. BP Clothing, for example, would be</p> <p>13 probably the biggest one.</p> <p>14 Q. This company that you have now</p> <p>15 learned is Vis-a-Vis, Phat Fashions had</p> <p>16 been receiving payments from them for</p> <p>17 several years; isn't that the case?</p> <p>18 MR. HOFFMAN: Objection to</p> <p>19 the form. Asked and answered.</p> <p>20 Isn't that the identical</p> <p>21 question you just asked?</p> <p>22 Q. Can you answer the question?</p> <p>23 THE WITNESS: Can you please</p> <p>24 read it back to me.</p> <p>25 (Whereupon the record was</p>
<p style="text-align: right;">340</p> <p>1 B. Ullmann</p> <p>2 accurate on the Vis-a-Vis statement</p> <p>3 because there is no licensing agreement in</p> <p>4 place; hence, there are no royalties.</p> <p>5 Q. Not accurate on the PF0085</p> <p>6 document?</p> <p>7 A. Correct.</p> <p>8 Q. Do you know why the word "Tornado"</p> <p>9 is written on top of Vis-a-Vis Fashions?</p> <p>10 A. I don't know who wrote it, so I</p> <p>11 obviously don't know why it's written</p> <p>12 here.</p> <p>13 Q. Can you explain to me how the</p> <p>14 royalty rate of 7 percent was established</p> <p>15 for Vis-a-Vis?</p> <p>16 MR. HOFFMAN: Objection to</p> <p>17 the form. That's not what it says.</p> <p>18 A. I'm sure you meant to say how the</p> <p>19 rate of commission was established at</p> <p>20 7 percent and I don't know how that rate</p> <p>21 was established.</p> <p>22 Q. Do you understand that you, Phat</p> <p>23 Fashions, was receiving a stream of</p> <p>24 payments from a company called Vis-a-Vis</p> <p>25 over several years?</p>	<p style="text-align: right;">342</p> <p>1 B. Ullmann</p> <p>2 read back by the reporter.)</p> <p>3 A. I am under the impression that we</p> <p>4 have received payments from an entity in</p> <p>5 Canada from Baby Phat sales.</p> <p>6 Q. You now understand that entity is</p> <p>7 called Vis-a-Vis?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me what your</p> <p>10 understanding is of the relationship</p> <p>11 between Vis-a-Vis and Issie Wiseman?</p> <p>12 MR. HOFFMAN: Objection to</p> <p>13 the form. You can answer.</p> <p>14 A. I believe Issie Wiseman is a</p> <p>15 partner or a part-owner involved in some</p> <p>16 type of principal capacity.</p> <p>17 Q. When did you come to that</p> <p>18 understanding?</p> <p>19 A. When he called me sometime in the</p> <p>20 fall of 2006 to share with me that he was</p> <p>21 in the process of losing the rights to</p> <p>22 Baby Phat products in Canada.</p> <p>23 Q. Over the years that you were</p> <p>24 receiving payment from the company that</p> <p>25 you then came to learn was known as</p>

<p style="text-align: right;">395</p> <p>1 B. Ullmann</p> <p>2 but certainly it would have been a</p> <p>3 discussion point then and, again, there</p> <p>4 was a discussion point when I, in the fall</p> <p>5 of 2006, was reviewing the options that we</p> <p>6 had for Canada and we reviewed the</p> <p>7 relationship with Tornado and Issie</p> <p>8 Wiseman.</p> <p>9 Q. Which Counsel provided you the</p> <p>10 advice, the information -- whichever word</p> <p>11 you'd like to use -- in 2004?</p> <p>12 A. That would probably have been done</p> <p>13 Gramke, possibly also with Eli Nathanson.</p> <p>14 Q. In fall of 2006?</p> <p>15 A. I want to say that it was Eli</p> <p>16 Nathanson and Luther Rollins.</p> <p>17 Q. Independent of your discussions</p> <p>18 with Counsel, do you have any</p> <p>19 understanding of the nature of the</p> <p>20 relationship between Vis-a-Vis and Phat</p> <p>21 Fashions?</p> <p>22 MR. HOFFMAN: Objection to</p> <p>23 the form. Asked and answered. You</p> <p>24 can answer.</p> <p>25 A. I don't consider there to be any</p>	<p style="text-align: right;">397</p> <p>1 B. Ullmann</p> <p>2 A. I am not familiar with the nature</p> <p>3 that has led to the payments. We have a</p> <p>4 number of licensees that controlled</p> <p>5 product that is being sold in Canada and</p> <p>6 it appears that Vis-a-Vis has struck</p> <p>7 relationships, distribution agreements,</p> <p>8 sub-agreements -- I don't know what they</p> <p>9 are -- with several of these licensees and</p> <p>10 engaged in sales of Baby Phat products.</p> <p>11 Q. Independent of your discussions</p> <p>12 with Counsel, do you have any</p> <p>13 understanding of the basis by which</p> <p>14 Vis-a-Vis sends money to Phat Fashions?</p> <p>15 MR. HOFFMAN: Objection to</p> <p>16 the form. Asked and answered. You</p> <p>17 can answer it again.</p> <p>18 A. I don't and I would think that</p> <p>19 there is no such relationship. As I've</p> <p>20 testified to earlier, Issie Wiseman</p> <p>21 initiated this renewal conversation, which</p> <p>22 was an amendment unsolicited. I think if</p> <p>23 he felt that there was a formal</p> <p>24 relationship that was unclear or needed</p> <p>25 clarification or there was a type of</p>
<p style="text-align: right;">396</p> <p>1 B. Ullmann</p> <p>2 relationship between Vis-a-Vis and Phat</p> <p>3 Fashions.</p> <p>4 Q. Do you know how much money</p> <p>5 Vis-a-Vis has sent to Phat Fashions over</p> <p>6 the years?</p> <p>7 A. I don't.</p> <p>8 Q. Do you think it's more than \$50?</p> <p>9 A. I do believe that.</p> <p>10 Q. Do you think it's more than</p> <p>11 \$100,000?</p> <p>12 A. Based upon the documents I have</p> <p>13 reviewed here, I think it's more than</p> <p>14 that.</p> <p>15 Q. Do you think it's more than \$1</p> <p>16 million?</p> <p>17 A. I don't know.</p> <p>18 Q. You would consider receiving</p> <p>19 regular payments from a company that may</p> <p>20 well total hundreds of thousands of</p> <p>21 dollars, if not more than a million</p> <p>22 dollars, to, in no way, constitute a</p> <p>23 relationship?</p> <p>24 MR. HOFFMAN: Objection to</p> <p>25 the form.</p>	<p style="text-align: right;">398</p> <p>1 B. Ullmann</p> <p>2 relationship, he would have included in</p> <p>3 that process all the products that he was</p> <p>4 representing, but he didn't. I have</p> <p>5 absolutely no reason to think that there</p> <p>6 was a need for any different type of</p> <p>7 relationship.</p> <p>8 MR. OFFENHARTZ: Move to</p> <p>9 strike as not responsive.</p> <p>10 MR. HOFFMAN: I think it was</p> <p>11 very responsive.</p> <p>12 Q. You seem now to have a recollection</p> <p>13 of Mr. Wiseman's discussions with you -- a</p> <p>14 further recollection of one of your</p> <p>15 discussions with Mr. Wiseman about</p> <p>16 renewal?</p> <p>17 MR. HOFFMAN: Objection.</p> <p>18 Q. Do you recall any additional</p> <p>19 information about any discussions you had</p> <p>20 with Mr. Wiseman regarding renewal?</p> <p>21 MR. HOFFMAN: Object to the</p> <p>22 form. Part of the first question</p> <p>23 and form.</p> <p>24 A. I do recall speaking to Mr. Wiseman</p> <p>25 in February of 2007, after he had been</p>

<p style="text-align: right;">399</p> <p>1 B. Ullmann</p> <p>2 advised that the amendment would not be</p> <p>3 executed.</p> <p>4 Q. Prior to that?</p> <p>5 A. And I remember, at that time, he</p> <p>6 did not once, during our four-day stay in</p> <p>7 Las Vegas, bring up the fact that he was</p> <p>8 under the impression that he had already</p> <p>9 renewed the agreement back in 2006. I do</p> <p>10 recall that.</p> <p>11 I also recall, if I could expand,</p> <p>12 he did ask, and I think I mentioned this</p> <p>13 before, if I thought there was a</p> <p>14 possibility that he could have footwear</p> <p>15 going forward. It was his opinion that</p> <p>16 the Gaby Bitton Group was not particularly</p> <p>17 strong in footwear. I know we had a</p> <p>18 footwear conversation and that was also in</p> <p>19 February of 2007.</p> <p>20 Q. Did you ever tell Mr. Wiseman that</p> <p>21 Russell Simmons executed the amendment</p> <p>22 renewing the license agreement for two- or</p> <p>23 three-year periods?</p> <p>24 MR. HOFFMAN: Objection to</p> <p>25 the form.</p>	<p style="text-align: right;">401</p> <p>1 B. Ullmann</p> <p>2 Mr. Simmons executed the agreement, shall</p> <p>3 we?</p> <p>4 A. I'm ready.</p> <p>5 Q. You have what's been marked as</p> <p>6 Defendant's Exhibit 6 in front of you?</p> <p>7 A. Yes.</p> <p>8 Q. You see that Russell Simmons did</p> <p>9 sign this document on page 0157?</p> <p>10 A. That is correct.</p> <p>11 Q. Did you ever tell Mr. Wiseman that</p> <p>12 Russell Simmons signed this document?</p> <p>13 A. I was not aware that Russell</p> <p>14 Simmons had signed this document, so</p> <p>15 consequently, I never advised Issie</p> <p>16 Wiseman that he had signed it.</p> <p>17 Q. Do you know if anyone else at Phat</p> <p>18 Fashions advised Mr. Wiseman that Russell</p> <p>19 Simmons had signed this document?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know if anyone at Pryor</p> <p>22 Cashman informed Issie Wiseman that</p> <p>23 Russell Simmons signed this document?</p> <p>24 A. I don't know, but the complete</p> <p>25 advisement would then have to include that</p>
<p style="text-align: right;">400</p> <p>1 B. Ullmann</p> <p>2 Q. Did you; yes or no? Did you?</p> <p>3 THE WITNESS: Can you please</p> <p>4 read the question back.</p> <p>5 (Whereupon the record was</p> <p>6 read back by the reporter.)</p> <p>7 A. I am not clear to the question.</p> <p>8 Are you asking if Issie Wiseman knew that</p> <p>9 Russell Simmons was one of the people</p> <p>10 signing, or are you asking if I told Issie</p> <p>11 Wiseman that Russell Simmons had signed</p> <p>12 the amendments extending the agreement --</p> <p>13 or rather providing for a new amendment</p> <p>14 commencing in '08?</p> <p>15 Q. It seems to be when the court</p> <p>16 reporter read back the question, she said</p> <p>17 the question was: "Did you ever tell</p> <p>18 Mr. Wiseman that Russell Simmons executed</p> <p>19 the amendment renewing the license</p> <p>20 agreement for two- or three-year periods."</p> <p>21 A. It's the periods I'm not</p> <p>22 understanding. It sounds like it's a</p> <p>23 general --</p> <p>24 Q. I very much welcome your follow-up</p> <p>25 question. Let's look at the exhibit when</p>	<p style="text-align: right;">402</p> <p>1 B. Ullmann</p> <p>2 Mr. Skinner had not signed the contract.</p> <p>3 Q. Mr. Ullmann, was my question at all</p> <p>4 unclear to you; did you not understand</p> <p>5 when I said that Russell Simmons had</p> <p>6 signed it?</p> <p>7 Maybe it would be helpful if I</p> <p>8 could learn if when I said, "Did anyone</p> <p>9 tell him that Mr. Simmons signed the</p> <p>10 contract," I don't know why that was</p> <p>11 unclear and I think it will help me in the</p> <p>12 future times, when I get to ask you</p> <p>13 questions in this case, if you could</p> <p>14 explain to me why, when I ask you, did</p> <p>15 Russell Simmons sign that, you seem so</p> <p>16 unable to understand that.</p> <p>17 The question is: Did you tell</p> <p>18 someone Russell Simmons signed?</p> <p>19 MR. HOFFMAN: I object to</p> <p>20 the form. It's argumentative.</p> <p>21 A. Okay. I wasn't clear and maybe</p> <p>22 it's a simple thing as the language</p> <p>23 barrier. I was not clear if your question</p> <p>24 earlier was general or it was specific.</p> <p>25 When you pulled out the exhibit, I</p>